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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 52

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

No. 53

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

BRITISH ASSETS TRUST, LIMITED

No. 54

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

SECOND BRITISH ASSETS TRUST, LIMITED

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 8, 1944

CERTIORARI GRANTED, MAY 29, 1944

SUPREME COURT OF THE UNITED STATES

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THE SCOTTISH AMERICAN INVESTMENT CO., LTD.

1 In the United States Circuit Court of Appeals
for the Fourth Circuit

Appendix to brief for petitioner

Filed Sept. 13, 1943

Before United States Board of Tax Appeals

Docket No. 104249

THE SCOTTISH AMERICAN INVESTMENT CO., LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances

For Taxpayer: Marion N. Fisher, Esq. For Commr.: Harold
D. Thomas, Esq.

Docket entries

1940

- Aug. 16—Petition received and filed. Taxpayer notified. Fee paid.
Aug. 16—Copy of petition served on General Counsel.
Sept. 19—Answer filed by General Counsel.
Sept. 19—Request for hearing in New York filed by General Counsel.
Oct. 1—Notice issued placing proceeding on New York calendar. Answer and request served.
Nov. 12—Reply to answer filed by taxpayer. 11/12/40 copy of reply served.

1941

- Sept. 16—Hearing set November 3, 1941, at New York City.
Oct. 15—Motion for a continuance filed by taxpayer. 10/16/41 granted to December 1, 1941, in New York City.
Oct. 17—Hearing set Dec. 1, 1941 in New York City.
2 Nov. 18—Motion to consolidate with docket 108441 for hearing December 1, 1941, filed by taxpayer. 11/21/41 granted.
Nov. 27—Application for subpoena to Gertrude Priester filed by taxpayer. Subpoena issued.
Dec. 9-10—Hearing had before Mr. Arundell on merits. Submitted. Dockets 104249, 50, 51, 108440, 41 and 42 consolidated for hearing. Motion to file amended answer lodged 11/24/41, granted 12/1/41—(This motion applies only to Dockets 108440, 41 and 42).
Petitioner's brief in 45 days, Jan. 24, 1942—re-

spondent's in 30 days, Feb. 23, 1942—replies 15 days, March 10, 1942.

Dec. 23—Transcript of hearing of Dec. 9th & 10th, 1941, filed.

1942

Jan. 24—Motion for proposed findings of fact filed by taxpayer. 1/24/42 copy served.

Jan. 24—Brief filed by taxpayer. 1/24/42 copy served.

Jan. 24—Stipulation correcting transcript filed.

Feb. 19—Motion for extension to April 9, 1942, to file brief filed by General Counsel. 2/20/42 granted.

Apr. 2—Brief filed by General Counsel.

Apr. 17—Reply brief filed by taxpayer. 4/18/42 copy served.

Aug. 6—Findings of fact and opinion rendered, Arundell, Div. 7. Decision will be entered under Rule 50. 8/6/42 copy served.

Oct. 15—Agreed computation of deficiency filed.

Oct. 20—Decision entered, Murdock, Div. 3.

3 1943

Petition for review by U. S. Circuit Court of Appeals, 4th Circuit, filed by General Counsel.

Jan. 18—Notice of filing petition for review sent to Marion N. Fisher, filed.

Jan. 21—Proof of service of filing petition for review filed.

Feb. 20—Motion for extension to 4/18/43 to prepare and transmit record filed by General Counsel.

Feb. 20—Order enlarging time to 4/17/43 to prepare and deliver the record entered.

Apr. 19—Certified copy of order from the 4th Circuit, extending the time to July 17, 1943 to complete and transmit the record filed.

May 26—Statement of points filed by General Counsel. Proof of service thereon.

May 26—Designation of contents of record filed by General Counsel, with proof of service thereon.

May 31—Certified copy of order from the 4th Circuit that the clerk of the Tax Court transmit to this court a single consolidated transcript of record in dockets 104249, 104250, and 104251 filed.

(The docket entries in Docket No. 104250, British Assets Trust, Limited v. Commissioner of Internal Revenue (Tr. 6-4) and in Docket No. 104251, Second British Assets Trust, Limited v. Commissioner of Internal Revenue (Tr. 5-6) are substantially the same as the above.)

Transcript of testimony

HENRY A. JEFFERS, called as a witness on behalf of the Petitioners, being first duly sworn, testified as follows:

Direct examination by Mr. FISHER:

Q. Mr. Jeffers, what is your occupation or profession?

A. I am a tax accountant.

Q. By whom are you employed at present?

A. The firm of Barrow, Wade, Guthrie & Co.

Q. How long have you been employed by that firm?

A. 8 1/4 years.

Q. You were employed by that firm in 1936?

A. Yes, sir.

Q. Did you do any work in connection with the affairs of Scottish American Investment Co. in 1936?

A. No, sir.

Q. At any time?

A. No, sir.

Q. I mean at any later time than 1936?

A. Yes, sir.

Q. When?

A. In February 1938.

Q. What kind of work did you do for the Scottish American Investment affairs in 1938?

A. I managed their offices here in the United States.

Q. Did you have anything to do with their accounts?

A. Yes, sir.

Q. Did you actually do any of their bookkeeping?

A. No, sir.

Q. Did you have charge of or supervision over the bookkeeping?

A. Yes, sir.

Q. And who did the bookkeeping under your charge or supervision?

A. Mrs. Wasmuth.

Q. Did she have anyone to assist her in the work?

A. Yes.

Q. Who?

A. A Miss Davis, when I took over.

Q. Are you familiar with the books of account and the book-keeping system of Scottish American Investment Co. in the office in this country?

A. Yes, sir.

Q. With respect to British Assets Trust, Mr. Jeffers, did you perform any duties in the affairs of that company?

A. Yes, sir.

Q. Were they in any way dissimilar to the duties performed for Scottish American?

A. No, sir.

Q. With respect to Second British Trusts, did you perform any affairs for that company?

A. Yes, sir.

Q. How were those duties—were those duties in any way different from the duties performed for the Scottish American?

A. No, sir.

Q. Were they in substance the same, would you say?

A. Yes, sir.

Q. Mr. Jeffers, I hand you the general ledger, Petitioner's Exhibit No. 23, for identification, and ask you to tell me the number of accounts carried in that ledger?

A. There are 50 at least.

Q. Are they nominal or real accounts?

A. Both.

Q. How many real accounts are there?

A. Six.

Q. And how many nominal accounts?

A. Forty-four.

Q. Does that ledger contain a security investment account?

A. Yes; a security investment control account.

Q. Does it show the value or cost of the securities carried in that account?

A. It shows the cost of the securities owned by the company.

Q. Are there any securities recorded in that account other than securities issued by United States corporations or other issuers?

A. Yes, sir.

Q. Do you mean that they are some foreign securities that are in that account?

A. Yes, sir.

Q. Are all the foreign securities of Scottish American Investment Co. in that account?

Mr. THOMAS. I object to that question. I would be purely hearsay on the part of this witness.

The MEMBER. I will overrule the objection.

Mr. THOMAS. Note an exception.

The MEMBER. Exception noted.

By Mr. FISHER:

Q. Answer the question.

A. I can't answer it.

Q. You don't know?

A. I don't know.

6 Q. Turn to the security investment control account, on what date was that opened?

A. December 2, 1936?

Q. What is the total cost of the securities carried in that account?

A. \$24,452,752.79.

Q. Is there any subdivision of those figures between securities issued by United States corporations or other issuers and foreign securities?

A. No, sir.

Q. At what cost are the securities in that account at the end of 1937, December 31, 1937?

A. \$25,035,121.29.

Q. 1938?

A. \$24,452,752.79.

Q. And at the end of 1939?

A. \$20,032,177.46.

The MEMBER. Those are cost figures?

The WITNESS. Yes, sir; in American dollars.

The MEMBER. May I ask one question, does that account from which you have just testified, was it made under your direction?

The WITNESS. Yes, sir.

The MEMBER. Where was the source of your information?

The WITNESS. Originally the information came from the head office abroad. The opening entry was from information supplied by them and after that it came from brokers and banks as to the purchases and sales of securities. The original entries were from the head office.

The MEMBER. All sales and purchases were made in this country?

The WITNESS. That is right; yes.

By Mr. FISHER:

Q. Now, I hand you the securities ledger of Scottish American Investment Co. Will you describe the character of entries, generally, in that ledger?

A. The ledger is divided into two parts, indexed alphabetically from A to Z. The first section contains accounts covering all bond investments owned by Scottish American. There is an account for each bond issue in here.

The second section contains an account for each issue of stock owned by the company in alphabetical order from A to Z.

Q. Do the accounts show with respect to shares of stock the numbers of certificates, that is to say, the numbers that the certificates bear?

A. Yes, sir.

7 Q. Does it show how many shares are represented by each certificate?

A. No, they do not.

Q. Does it show the date of acquisition of each certificate?

A. Not separately, no, sir.

The MEMBER. What does that mean, not separately?

The WITNESS. For example, the corporation may have acquired 1,500 shares of a given stock and had it registered in 15 different certificates. The numbers would naturally run in order. On the other hand, they may have acquired 500 shares and bought at different times and registered in different names. That may have occurred before 1936. We would have taken it up on our books as 1,500 shares and not identified particularly, the dates and the number of shares against the certificates.

We would know, however, that each of the 15 certificates was for 100 shares.

For instance, there are cases in which the number of shares owned and divided into 10-share lots or 50-share lots. We know that to be the fact.

If, for example, the certificate has an uneven number of shares, we also know that and we also know which certificate it is.

By Mr. FISHER:

Q. Can you turn to any account there and tell from the account the cost of shares purchased on any particular date?

A. Yes, here is the Allis Chalmers Manufacturing Co., 500 shares were purchased on October 1, 1936 for \$32,525.

Q. Taking the item that you just read, your ledger doesn't show then the number of certificates representing that 500 shares?

A. Yes, it does. The number of certificates are on the opposite page, posted against that block of stock, being 5 certificates, the numbers are given.

Q. Then I will ask you again, can you tell the number, the date of acquisition and the cost of any particular certificate bearing on those accounts?

A. Yes, sir.

The MEMBER. I thought the answer before was yes or no. I thought there are some instances where he can't.

Q. Is that true with respect to the securities on hand December 2, 1936?

A. Yes, sir.

Q. Can you illustrate that by any entry there?

A. Yes, both of these blocks of stock.

Q. What blocks?

A. This is Allis Chalmers to which I previously referred were acquired prior to December 2, 1936.

Q. All right.

The MEMBER. Were they all acquired on one day?

The WITNESS. No, sir, 500 shares were acquired in October and 500 in November, 1936. The 500 were acquired, I think all at one time according to this entry here.

The MEMBER. And one certificate for 500 shares and you know the cost?

The WITNESS. The 500 shares were purchased and issued in 5 certificates of 100 shares each.

By Mr. FISHER:

Q. If they were issued in 5, 100-share certificates, would your ledger show that fact?

A. Yes, sir.

Q. If they were issued in one certificate of 500 shares, would your ledger show that fact?

A. Yes, sir.

The MEMBER. Your prices may be averaged? For example, you may buy 100 from A and 100 from B and 100 from C and at some variance in price and you get one certificate of 500 shares and you put the total as if they were bought at an average price as of that day, is that correct?

The WITNESS. That is correct.

By Mr. FISHER:

Q. If there had been any securities purchased in 1937, by what means would the office in this country get information as to that purchase?

A. Advices from the bank through which the securities were paid for, if purchased, and from the broker.

Q. From both sources?

A. That is right.

Q. In what form would the advice come from the broker?

A. Regular brokers advices as to the purchases of the securities.

Q. In the case of securities purchased after December 2, 1936, would you know the cost of each certificate if more than one certificate were purchased on a given day?

A. I can't answer that question. You see, those details were taken care of by the bookkeeper.

Q. Have you counted the number of accounts in that ledger for the end of 1936?

A. Yes, sir.

Q. Can you say how many accounts there were?

A. If I refer to my notes; 340.

Q. Did each account represent securities issued by a separate corporation or other issuer?

A. No.

9 Q. Have you counted those securities to ascertain how many separate corporations or other issuers are represented in the investments recorded in that ledger?

A. Yes, sir.

Q. How many?

A. As of what date?

Q. As of the end of 1936.

A. There were 267 issues.

Q. Issuers?

A. Issues.

Q. Issues?

A. That is right.

Q. How many accounts were there at the end of 1937?

A. I do not have that figure.

Q. I hand you the journal of the Scottish American Investment Co. and ask you to describe generally the opening journal entry giving its date.

A. In order to supply the date, I will have to read the preamble. "This company has established a New York office as of December 2, 1936, and the following securities were transferred from the head office account to these books." There is no date.

Q. No date on the entry?

A. No, sir.

Q. Do you know of your own knowledge when that entry was made?

A. No, sir.

Q. What does that entry contain, what information?

A. It contains a complete list of all securities held in the United States by the Scottish American Investment Co., the investment in American dollars in those securities, the number of shares or par of bonds and the date acquired.

Q. Would the number of stocks and bonds described in that opening entry correspond to the number of accounts set up in the security ledger?

A. Yes, sir.

Q. Mr. Jeffers, have you counted the number of entries that were made in that journal for the period between the opening and the close of December 1936?

A. Yes, sir.

Q. How many were there?

A. Thirteen pages.

Q. Does that cover all the entries made prior to January 1, 1937, or does that cover only the opening entry?

Mr. THOMAS. I object. You say the entries made prior to January 1, 1937. I don't think this witness knows when the entry was made.

10 Q. On entries made on a date prior to January 1, 1937?

A. The number of pages that I gave, 13, does not cover all of the entries made on dates prior to January 1, 1937.

Q. What does that number cover?

A. Only the opening entry.

Q. Were any other entries made under date of January 1, 1937?

A. Yes, sir.

Q. How many?

A. Four.

Q. Four entries?

A. Pardon me, I am sorry; eleven.

Q. What character of entries did that embrace?

A. Well, all entries not involving cash.

Q. Would it cover acquisition of securities?

A. No, sir.

Q. Will you read at random two entries made in that period?

A. "December 29, 1936, debit securities control account, \$9,225, 144 shares, Youngstown Steel & Tube Co., common.

Credit, securities control account, \$9,000, Youngstown Sheet & Tube Co. 31½ per cent, debentures due February, 1951, to record the conversion of 9,000 par value bonds into stock."

Q. Go anywhere on the next page and pick an entry in the middle of the page and read it.

A. "December 31, securities control account, \$14,110.20"—that is debit securities control account. "600 shares, United States Smelting, Refining & Mining Co., 7 per cent cumulative preferred. Credit gain or loss on securities sales, \$14,110.20 to record gain realized on the sale of 600 shares of United States Smelting, Refining & Mining Co., 7 per cent cumulative preferred as follows: "Proceeds from sale \$43,500 less cost \$29,389.80. Gain \$14,110.20."

The MEMBER. A moment ago you testified about some gains in United States Smelting, Refining & Mining Co. stock.

The WITNESS: Yes.

The MEMBER. What did that entry indicate, a sale?

The WITNESS. The purpose of the entry was to record the gain from the sale. You see, the sale itself goes through the cash book because it's a cash transaction. In order to get the gain or loss into the P and L account, we have to put an entry in the journal.

The MEMBER. Does your journal show the entries of sales made?

The WITNESS. Not this one.

The MEMBER. Why not that one?

The WITNESS. This only shows the gain or loss from the sale.

The cash transaction itself. That is the actual sale where we get cash goes through the cash book. The actual purchase, where we spend the cash, goes through the cash book. Where we make a sale we have to put the journal entry separately from the cash transaction.

By Mr. FISHER:

Q. Is it true or not that every sale would entail the making of a journal entry?

A. Yes, sir; it would.

Q. How about purchases?

A. No.

Q. Now, I hand you the cash book of Scottish American and ask you to tell me what transactions were entered in the cash book?

A. All transactions involving cash, either receipts or expended are recorded in the cash book.

Q. Was any voucher system maintained?

A. Yes, sir.

Q. Would you describe the character, the kinds of vouchers you were maintaining?

A. We had a cash receipts voucher and a cash disbursements voucher.

Q. Are all the cash receipts and disbursements covered by voucher?

A. Yes, sir.

Q. What I mean is that is the accurate description of them as cash receipts vouchers and cash disbursements vouchers?

A. No; I think it would be more accurate to say credit vouchers and debit vouchers.

Q. What character of items were entered upon credit vouchers?

A. Sales of securities.

Q. I hand you a yellow folded slip of paper bearing a number 274, and ask you to say what that is?

A. This is a credit voucher.

Q. Of what?

A. Scottish American Investment Co., Ltd.

Mr. FISHER. I ask that that be marked for identification as Petitioner's Exhibit next in order.

The CLERK. Petitioner's Exhibit 27 marked for identification.

(Document received and marked "Petitioner's Exhibit 27" for identification.)

By Mr. FISHER:

Q. What transaction is entered on that voucher?

A. The record, it records the sale of 100 shares of Hiram Walker, Gooderham & Worts, Ltd. cumulative preferred stock.

12 Q. Does that voucher have any paper attached to it?

A. Yes, sir.

Q. What is attached to it?

A. There are two papers attached, one is an advice from J. P. Morgan & Co., stating that we have today delivered against cash received and credited to your account 100 shares of Hiram Walker, Gooderham & Worts, Ltd. cumulative preference, \$1,903.96.

Q. What is the other paper attached?

A. A broker's advice from Baker, Weeks & Harder.

Q. Describing what transaction or advising what?

A. It states that they have sold for our account 100 shares of Hiram Walker, Gooderham & Worts, PR., meaning preference.

Q. Were any other types of transactions recorded in credit vouchers?

A. None that I can recall.

Q. I hand you a book bearing the legend outside British Assets Trust and ask you to state what that is?

A. This is the ledger of the British Assets Trust, Ltd.

Mr. FISHER. I offer this for identification as "Petitioner's exhibit next in order.

The CLERK. Petitioner's Exhibit 29 marked for identification.

(Document received and marked "Petitioner's Exhibit 29" for identification.)

By Mr. FISHER:

Q. I show you another book marked outside British Assets Trust and ask you to state what that book is?

A. This is the security ledger of the British Assets Trust, Ltd.

Mr. FISHER. I ask that this security ledger be marked for identification.

The CLERK. Petitioner's Exhibit 30 for identification.

(Book received and marked "Petitioner's Exhibit 30" for identification.)

By Mr. FISHER:

Q. You stated Petitioner's Exhibit 29 just marked for identification was the ledger, a ledger, what is the distinction between that and the security ledger you have just identified?

A. The security ledger is a subsidiary ledger.

Q. Now, Mr. Jeffers, have you counted the number of accounts in the ledger?

A. Yes, sir.

Q. Which I will refer to for convenience as general ledger. How many accounts are in that ledger?

A. 49.

13. Q. Does that ledger contain a record of the security investments and if so, describe the record.

A. There is a security control account in the ledger which at all times reflects the total net dollars investment in securities in the United States.

Q. What do you mean by net dollars investment?

A. Probably I should have said total.

Q. What new purchases of securities would be entered into that account? Let me put it this way: Would new purchases of securities be entered in that account?

A. Yes, sir.

Q. Would sales of securities be recorded in that account, reducing the investment in that account?

A. Yes, sir.

Q. Does the account show the dollar figures with respect to the securities?

A. Yes, sir.

Q. Are those figures cost or value; if not either, what?

A. Cost.

Q. At what cost does the account show the securities at the end of 1936?

A. December 31, 1936, \$15,163,339.80.

Q. Will you give the corresponding figure for the end of 1937?

A. \$16,206,988.50.

Q. And the corresponding figure for the end of 1938?

A. \$16,011,067.32.

Q. At the end of 1939?

A. \$11,961,056.79.

Q. There is a noticeable decrease between the end of 1938 and the end of 1939 in the figures you have just testified to. What does that indicate?

A. Heavy sales in 1939.

Q. There was a noticeable difference in the corresponding figures testified to by you with respect to Scottish American between 1938 and 1939?

A. Yes, sir.

Q. What does that indicate?

A. The same thing.

Q. Do you know the occasion for such heavy sales by these companies?

A. No, sir.

Q. I hand you the security ledger of British Assets Trust. Will you describe the character of entries contained in that security ledger in general terms?

14 A. It contains accounts, it contains an account for each security, bond or stock owned by the British Assets Trust in American dollars in the United States.

Q. Are the records entered in that security ledger different from or similar to the records that you have described in the security ledger for Scottish American Investment Co.?

A. They are similar to those in the Scottish American Trust.

Q. How many such accounts were there in the security ledger at the end of 1936 as of the end of 1936?

A. Approximately 381.

Q. At the end of 19—do you have that figure for the end of 1937?

A. I do not.

Q. I hand you a book with the name British Assets Trust on it outside, and ask you to state what that is?

A. This is the journal of the British Assets Trust.

Mr. FISHER. I ask that this be marked for identification as Petitioner's next number in order.

The CLERK. Petitioner's Exhibit 31 for identification.

(Book received and marked "Petitioner's Exhibit 31" for identification.)

By Mr. FISHER:

Q. Mr. Jeffers, I ask you to describe in general terms the opening entry in that journal.

A. There are two opening entries.

Q. Describe them in order.

A. Precisely the same. They record the number of securities owned by the British Assets Trust in the United States in dollars as of December 2, 1936. They show the number of shares or par of the bonds, and the cost in American dollars in addition to a description of each security. One entry records the securities held at J. P. Morgan & Co., the other entry which is precisely the same in form records the securities held at the National City Bank of New York.

Q. What is the total dollar value in the entry on the securities held by J. P. Morgan & Co.?

A. \$4,132,157.69.

Q. And the total figure with respect to securities at the National City Bank?

A. \$10,842,201.98.

Q. Have you counted the number of entries in that journal under date prior to January 1, 1937?

A. Yes, sir.

Q. How many were there?

A. There were six.

15 Q. Does that include opening entries?

A. Yes, sir.

Q. How many entries were there in that journal for 1937?

A. 68.

Q. And how many pages of the journal were used for recording the entries?

A. 22.

Q. For 1938, give me the number of entries?

A. 78.

Q. And the number of pages in the journal?

A. 29.

Q. For 1939, the number of entries?

A. There were 78 also.

Q. And the number of pages?

A. 36.

Q. Is the character of the entries in the journal you now have before you different from or similar to the character of the entries in the journal of Scottish American Investment Co.?

A. They are similar to it.

Q. I hand you another book marked with the name British Assets Trust, Ltd., and ask you to state what that is.

The MEMBER. After you have illustrated them is it necessary to take each book to get all that data?

Mr. FISHER. There isn't any controversy of figures involved, your Honor. I am just trying to give a fairly comprehensive but not too extensive description of the bookkeeping system and the volume of bookkeeping.

The MEMBER. I understand that is identical with each of the companies.

Mr. FISHER. The system.

The MEMBER. And the number of pages or entries depends entirely on how many sales or purchases or what they are?

Mr. FISHER. Right.

The MEMBER. So that as I understand his testimony, they entered here all the purchases and sales of receipts and dividends and interest?

Mr. FISHER. On securities held in this country.

The MEMBER. That is right.

Mr. FISHER. That is correct.

The MEMBER. Well, then, it doesn't seem to me after you once illustrated it as much as you have, to go through all this.

Mr. FISHER. Well, I don't want to have any distinction made between the companies and they are really three clients and I would like the record to stand up so that it wouldn't appear on reading the record that facts were really different than they are. The volume is different, naturally, because they had different amounts of securities and different numbers of transactions.

The MEMBER. I don't understand that they are different and I don't believe you make any contention that they are different.

Mr. THOMAS. No; I don't believe so. I think the method of bookkeeping and accounting is the same for all three companies except for the volume of transactions which would depend on the particular size of the company and the number of transactions. I want to say this, however, that I did raise a point for 1936 as to just what the activities were during the month of December 1936. As to whether that is applicable to all three companies alike or not, I don't know.

The MEMBER. I suppose that could be ascertained.

Mr. FISHER. The witness tomorrow will explain what was currently done during December 1936. The permanent form of books was not established at that time and he will explain what was done during that interval before they established, decided upon and made entries in the permanent form of books and that is why I made the distinction in the form I asked the questions for the period prior to 1937.

Q. Mr. Jeffers, did the Second British Assets Trusts have a general ledger?

A. Yes, sir.

Q. Was it different in any way substantially from the general ledger of the British Assets Trust and Scottish American?

A. No, sir.

Q. Did Second British Assets Trusts have a security ledger?

A. Yes.

Q. Did it differ in any respect from the other security ledgers?

A. No, sir.

Q. Did it have a journal?

A. Yes, sir.

Q. Did it have a cash book?

A. Yes, sir.

Q. Did they differ in any respect—in any substantial respect from the other journals and cash books?

A. No, sir.

Q. Did British Assets Trust have a voucher system?

A. Yes, sir.

Q. Did Second British Assets Trusts have a voucher system?

A. Yes, sir.

Q. Did they differ in any respect from the voucher system of Scottish American Investment Co., Ltd.?

A. No, sir.

17 The MEMBER. What are debit vouchers, what they received?

The WITNESS. A debit voucher was used for the purchase of securities, expenditures of all expenses were all debit vouchers, in addition to that, we made out a debit voucher for expenditures of new securities, in the purchasing of new securities. Debits have to do with all purchases and expenditures of money.

Q. What was the cost recorded on the ledger of securities of Second British Assets Trusts at the end of 1936?

A. I don't have that figure.

Q. Can you get it from the ledger?

A. Yes; ledger or journal.

The MEMBER. It seems to me these figures are more or less immaterial: Can't you just read the figures in the record by agreement?

Mr. FISHER. Yes; I don't have to put it in, at December 2, 1936, the Second British Assets was \$8,457,000 the nearest even number.

Mr. THOMAS. That is agreed to.

Mr. FISHER. At the end of 1937, \$8,615,000. At the end of 1938, \$8,360,000. At the end of 1939, \$6,078,000.

Mr. THOMAS. I will agree to those figures.

Cross-examination by Mr. THOMAS:

Q. This is Petitioner's Exhibit No. 25 for identification, I believe. Is that what you call the journal of the Scottish American Co.?

A. Yes, sir.

Q. And I believe you testified that there were 13 pages of opening entries?

A. That is right.

Q. Aren't those opening entries simply listing the security which the Scottish American Investment Co. had in the United States?

A. The 13 pages include the entry and the usual explanation of the entry.

Q. But I mean, isn't that just a list of the securities?

A. It so happens that the explanation is a list of the securities making up the total amount of the entry both debit and credit.

Q. And those were securities, I believe, posted to a security ledger?

A. That is right.

Q. Showing cost?

A. That is right.

18 Q. And I believe you stated that when purchases and sales of securities are made, the books record that so that all the time you have a record of the securities owned?

A. That is right.

Q. Well, in the recording of purchases and sales of securities, what was the source of information from which you made the entries on the books?

A. The source of information was from the bank and the broker in each case.

Q. Now, as I understand it, and tell me if I am incorrect, the main office of each of these petitioners in Edinburgh when they wanted to buy or sell securities, would cable their broker over here in the United States to buy or sell?

A. I am not sure of the exact *modus operandi*. All we need receive are these advices from the brokers and banks.

Q. In other words, the purchases or sales had already been made when you received them?

A. The instructions have been received.

Q. And you would be notified by the broker, J. P. Morgan, or the National City Bank, that a certain sale had been made at a certain price, or a certain sale had been made at a different price?

A. That is right.

Q. No checks for the purchase price of the securities were ever made out in your office?

A. Not to my knowledge; no, sir.

Q. And those checks in payment of the securities sold by petitioners never came through your office?

A. Not to my knowledge; no, sir.

Mr. THOMAS. May the record show when I speak of your office or the United State office, I am using it as a general term and not any admission that it is an office or place of business in the United States within the meaning of the statute.

The MEMBER. I suppose you also mean the office of these companies here?

Mr. THOMAS. When I refer to "your office" or "the United States office," I am referring to what is alleged to be an office of the petitioners in the United States.

By Mr. THOMAS:

Q. Now, Mr. Jeffers, isn't it true that practically these same kinds of records are kept by the main office of each of the petitioners in Edinburgh?

A. I would have to express my opinion. I am not familiar with their bookkeeping system. I know this, as a matter of fact, that our records here are the original records, copies of which were sent abroad, which would make it unnecessary for them to duplicate them over there. I don't believe that they would go to the trouble of duplicating of what has been done here. These are the original records.

Q. They would necessarily know, the Edinburgh main office, what securities they had on hand at all times, what ones they sell and buy?

A. I would assume so.

Q. They have direct information from their brokers?

A. Yes, sir.

Q. From their custodian?

A. Yes; in a general way they might. This is purely my opinion, of course.

The MEMBER. You don't report to the Edinburgh office each and every transaction?

The WITNESS. No, sir; the only report we make consists of copies of the cash sheet and copies of the journal entries.

The MEMBER. How frequently do you furnish those?

The WITNESS. Once a month.

By Mr. THOMAS:

Q. Mr. Jeffers, what is the course of entries recording the receipt of dividends checks?

A. The dividend check itself.

Q. What is the source of entries regarding interest?

A. Advice from the bank that the coupons have been clipped and the interest collected.

The MEMBER. I don't understand the witness's statement about the dividend checks?

The WITNESS. He asked the source of the entry for the receipt of dividends. We naturally make the entry when we receive the check. The check is the basis of the entry.

The MEMBER. To whom is the check sent?

The WITNESS. Sent to the office of these companies here in the United States. Sent direct to us and we make the entry, and deposit the checks in the bank ourselves.

The MEMBER. In what type of bank?

The WITNESS. I think it is just a general bank account with Morgan & Company, and the National City Bank. There are four of them, two with Morgan and two with the National City Bank. The British Assets Trust has two bank accounts, one with Morgan & Company and one with National City.

The securities held with Morgan & Company in those cases, the dividends are deposited with Morgan & Company. In the securities held with National City, the dividends are deposited there.

In the other two cases the Scottish American has a bank account with Morgan, and the Second British with National City Bank only.

The MEMBER. What endorses them?

The WITNESS. We endorse them with a rubber stamp and deposit them. We have a special deposit ticket that we use.

By Mr. THOMAS:

Q. These stocks are listed in the names of nominees, are they not?

A. Yes, sir.

Q. And those nominees are at all times, and have been at all times employees of, or associates of J. P. Morgan & Company, Inc.?

A. They are employees of the National City and J. P. Morgan.

Q. I meant to include also the National City in the case of the two accounts.

A. Yes, sir.

Q. Doesn't that nominee have to do anything about endorsing the dividend checks?

A. No, sir; for example, a dividend order was issued to each company instructing them to issue it direct to the company and not to the nominee.

Q. But the nominee would be the record owner of the stock?

A. He is the record owner, yes, sir.

Q. Then, as I take it, Mr. Jeffers, these books that you have described for each of the petitioners, they really show the amount and detail of securities owned at all times, and whenever there is any change because of purchases and sales those are recorded on the books?

A. Correct.

Q. And the books record dividend income, bond interest income and record the paying out of the office expenses over here?

A. That is correct.

Q. Isn't that in general what the books cover?

A. I wouldn't say that that would be all, no, sir.

Q. Did your books, for instance, show the amount of cash on deposit at all times with the custodian banks?

A. Yes, sir.

Q. Was that information furnished by the banks, monthly?

A. We received the usual bank statement and we reconciled that with our own cash accounts.

WALTER A. COOPER, called as a witness on behalf of the petitioners, being first duly sworn, testified as follows:

21 Direct examination by Mr. FISHER:

Q. What is your occupation?

A. I am a certified public accountant, presently a member of Peat, Marwick, Mitchell & Company.

Q. Were you ever a member of the firm of Barrow, Wade, Guthrie & Company?

A. I was, from some time in 1927 until October 31st, 1940.

Q. Prior to 1927 were you employed by Barrow, Wade, Guthrie & Company?

A. Yes; I was employed by them from 1917 until I became a partner.

Q. Did the clients of Barrow, Wade, Guthrie & Company during the time you were a partner, include any foreign corporations?

A. Yes; quite a number.

Q. Would that number be substantial?

A. I should say upwards of a hundred, anyway.

Q. Were any substantial proportions of those corporate clients investment trusts?

A. The majority were investment trusts, probably, oh, close to 75.

Q. In what country were these clients, principally located?

A. Almost all in Great Britain. A few in France, and Belgium, but mainly Great Britain.

Q. What is the character of business of these companies?

A. Well, they are all investment trusts and I call them pure investment trusts, which is a peculiar term, but I use that to distinguish between the usual investment trust which we have over here, which is more of a trading company. And these companies are dealing only with investments, only for the purpose of income. They don't pay any attention to capital gains, and can't pay dividends out of them as their charter prevents that and they don't figure them out, and that is why we had so much trouble with the tax returns, because they didn't figure them.

This is wholly predicated on having what they call ordinary shares preceded by several grades of securities by preferred shares down to secured bonds all paying certain amounts of interest or dividends, and then receiving that money so as to produce a greater return.

They usually look for a margin of about 1 to 1 $\frac{1}{4}$ per cent gross difference what they can get and what they can pay out, and after they allow for the expense of operation, the balance is for the common or ordinary shareholder, and that is the way they operate.

22 Q. What arrangements had these companies had regarding the care of the securities, the collection of their income on American securities prior to December 1936?

A. Well, their securities were in the hands of either J. P. Morgan & Company or the National City Bank in a custodianship account, and those banks would collect the income and interest and whatever was to come in and credit the accounts of the several companies involved.

Q. Did you take up the question of changing these arrangements in any way with the banks after you were appointed assistant secretary?

A. Well, these investment companies have to leave their securities in the names of nominees, so they could make good delivery whenever they are sold and we discussed them with the two banks the question of arranging for the payment of dividends directly to the companies at their own office. That meant, in order to avoid confusion, they had to create new nominees or appoint new nominees for these companies so that they would have only the securities of one of these companies, so that was the procedure eventually developed, and both Morgan and the National City Bank transferred all these securities to special nominees.

They filed what we call mandates or dividend orders, with the companies in which we had invested, directing them to make all disbursements to the companies at their offices and send the companies at their offices all notifications so that the nominee merely held securities in his name, and of course the physical paper was in the possession of the bank, and whoever handled it in the bank would be somebody different from the nominee, and we collected all dividends except the coupons for the interest on the bonds, and they would collect that by depositing the coupons for us.

Q. Did you have authority to draw checks on your single signature?

A. Well, I had the same authority as any other director or officer, which was to draw up to \$5,000 per month on the regular funds and draw unlimited amounts on joint signatures. That

was the arrangement for all officers and directors. Not all of them could draw up to \$5,000 per month limit, and anything above that had to be a joint signature.

Q. Is that true of both, the two Scottish and the two investment trusts?

A. Yes, sir.

Q. You said the same as any officer or director. You weren't a director?

A. No; but they didn't have any more authority than the secretary or assistant secretary.

23 Q. Were the bank accounts on which you had authority to draw checks, special accounts, or separate from other funds of this company, or were they ~~general~~ funds with the banks here?

A. Well, they were general funds and I had authority to draw on those funds. They were really the only accounts they had except in Morgan, and they may have had a loan account. That wasn't a bank deposit. That was money borrowed, though occasionally it might run into a credit balance.

My authority was on any funds that J. P. Morgan had belonging to these companies, and the same with National City.

By Mr. FISHER:

Q. Mr. Cooper, tell us what steps you took in connection with the opening of the office here?

A. Well, when we got the letters authorizing us to go ahead and probably after I received the cable, knowing that the instructions were official, and on the way we started from two angles. One, opening the office and getting prompt space, and I took that up with the Equitable Building and I took over two rooms on the floor below us on a lease basis running until the end of their season, which was the following May 31st, giving me the right to cancel it at any time I wanted to do it on thirty day notice, because it came so suddenly that I just did not have time to shop around or do the best I could. I just said to the Equitable Building, how much rent, and whatever it was, and then we took up with the bank the question of issuing the mandate or dividend orders and ran into this complication about nominees, and I then took up the difficulty of that situation with some of the banks who act as paying agents, and with some of the corporations themselves.

We ran into this difficulty that, if a particular nominee of, say, J. P. Morgan & Company, had in his name securities belonging not only to one of our companies, but to other owners of stock in

that company, that they would have to issue a dividend order on, say, 2000 shares of the stock of "X" corporation and the X corporation or the banks who were acting as paying agents, were a little concerned about possibly getting all mixed up in paying their dividends, and if they had shares in the names of John Jones, nominee, we decided the best way would be to appoint one nominee for each company, who would act as nominee for this company and nobody else, and they would simply issue a dividend order on any shares in his name. That was the way it was finally arranged with the banks.

Q. Did such an order have to be issued with respect to each dividend?

24 A. No; it was issued with respect to the shares listed in the nominee's name, and once that was filed with the corporation with which we held the investment, or with the paying agent, that covered anything that happened from then on.

Q. Did you arrange for any clerical or accounting help for the work of carrying on the offices in this country?

A. That started, of course, as soon as we had our arrangements with the banks, and our office space, knew where we stood, I then took a man named Voles and who at one time was a cashier of the firm and was now engaged in handling both accounting and security work for different individuals and corporations, although very much smaller than this situation, and I had him start on the problem of developing the kind of accounts we wanted to keep, the type of records and the methods of operation.

He stayed on it from the time he started, which was some time in December, until I think it was early January, when Miss Priester, she is a certified public accountant, was taken on, and I couldn't leave Mr. Voles take care of it for all time, because he had other matters to handle also, and couldn't devote all his time to this company, and I took Miss Priester on, and put her down in the office of the company and in charge of that office, and I think immediately, or shortly after, we engaged an assistant, Miss Wasmuth.

Meanwhile, however, I had two or three of the regular staff, men of Barrow, Wade, Guthrie & Company working on it in order to try and catch up, as fast as we could and as far as we could.

A man named Allen and Mr. Peavy, as well as Mr. Voles, Miss Priester, and Miss Wasmuth, and then after we had our system developed we did not really need as much help, and my compensation was the difference between what I got and what I had to pay out, and I was very much concerned in getting that down to an efficient basis as soon as possible.

Q. The ledger, journal, and cash book have been identified in the record. Were those as they now exist: actually begun at any time during 1936?

A. No; we started with our accounting on a temporary record basis until we were able to, well, first find out what sort of transactions we had, and how we would have to keep the records to fit in with actual practices. Also after we developed a form we sent it abroad to find out if it was satisfactory to them because these were to be the records about United States transactions and after that was decided upon, we had to have them printed, so that it was some time in probably late January or early February before we actually received our forms which constituted our accounting records.

25 Q. We, meanwhile, kept all the data on temporary records and we finally wrote them up on final forms after they were obtained.

Q. Did you send copies of any of the accounting records to Edinburgh?

A. Oh, yes; we sent them copies of each of our records. That is the reason we adopted a loose-leaf sheet that could be adopted in duplicate and later on in triplicate form which made it necessary for these companies, and we kept the original and sent the other two abroad about three days after the end of the month.

We don't send them copies of the ledger, but the journal, cash receipts, and cash disbursements, and we also had to get binders and send them over because this constitutes their accounting record, except as they convert the cash into Sterling, which they have to pick up on their records.

Q. I show you a folder with a number of papers together and ask you to tell us what that is?

A. Those are the original temporary records where we kept the records until they were written up.

Q. On each company?

A. This is the Scottish American; this is the cash receipts.

Q. Did you have similar temporary records for the British Assets Trusts companies?

A. We had the same type of records for all three.

Q. Were the figures entered on those records that we have described as temporary records currently entered?

A. Yes, sir; for example, the cash receipts would be entered the day we got the check, because we would have to write our cash record up simultaneous with making out the deposit slips so that we would have a record of what it consisted of. Except I might say here, possibly some of these early receipts did not come to us, but went directly to Morgan, or National City, and they would advise us that they had received certain dividends and

we then wrote it up from their advice, but this started in December and in many cases these dividends were payable later on in December to start as of record, as of the first of December.

We had not been able to get our transfers made and mandate in so that the dividends were ~~still going to the old nominee~~ and by the end of December we had it pretty well cleared up, so it may be that some of those December dividend receipts were not received by us in check form, but were received by the banks and they advised us.

Q. Mr. Cooper, what reports were you required to make to the home office?

A. What do you mean by reports?

Q. Accounting reports.

26 A. Well, we were required to send them a carbon copy of the cash receipts and disbursements book which is from our own record, and in the case of Scottish American they insisted that I certify it, whereas the British Assets Trust did not require that, and we sent a copy of the journal entries. They were sent over when those journal entries were completed sometimes maybe a week behind the completion of the cash record because we did not work that up until after the month was over.

We also sent the annual statement at the end of December, and frequently on December 1st, we would send out a statement up to date because they sometimes wanted to be in a position to close their accounts rapidly, and I know what we would do would be to send them a statement of receipts up to a certain point, say, December 15th.

We then knew what dividends would be received between the 15th of December and the 31st, and we could say our receipts were so much, and from then on to the 31st it would be so much. That was set on the basis that if we did not get the receipts we estimated, we would cable them the differences and, why, so that they knew on December 31st just what we knew, just how much income they would receive during the year and we did the same thing on estimated expenses.

We knew what expenses we would have to pay and sent that out in advance and later confirmed it with actual requirements of the entire year, and we also sent copies of the tax returns too.

Q. It was pointed out in cross-examination of the previous witness that there were checks drawn for office expenses, certain office expenses and sundry items, by yourself, and that those checks were drawn on the general account with the banks.

Did your arrangement with these companies provide that out of your compensation you would pay all expenses of every nature?

A. No; I was not to pay the postage, cablegrams, traveling expenses, or anything like that, that incurred stationery or that

kind of stuff. I was to pay all the so-called general office expense, that is, providing the place, and assistance or service necessary.

For example, they paid for the printing of those special cash sheets. They paid cablegrams.

Q. Was the rent for the office paid out of your compensation, or fee?

A. Well, originally we started that way, and later on they paid it direct. That happened to change, I think, after a couple of months. As a matter of fact, it was changed the first month. They started off with the idea that I would pay it, but when I opened a special office I figured they ought to pay it and told them so, and so they paid it.

Q. Did they reduce your original fixed compensation by the amount of rent?

A. They adjusted the amount as they went along, but that was a more or less tentative arrangement, the amount of the compensation, because nobody knew just what work would be involved and what I would have to do and how many people I would have to engage.

Our arrangements were flexible. They said, "We will pay you so much money," and I wrote back and said, "That is all right, we will see how it works out at the end of the year."

Q. Mr. Cooper, how was your compensation or fee paid by the Scottish American Investment Company, Ltd.?

A. The Scottish American Investment Company, Ltd. used to send me a check or draft from the other side.

Q. What about the British Trusts?

A. They insisted that I write my own checks and Scottish said all right, we will send you a draft from the other side, and I drew my own on the other two.

Q. Besides the accounting and banking arrangements that you already discussed, what other duties were performed by you or the staff which you installed here?

A. Well, there were quite a few different situations involved. One was the fact that they had found difficulty in keeping themselves posted about the numerous companies in which they had investments. For example, they always had a great deal of difficulty in getting the annual reports or statement issued by these companies in which they had investments, and many times they wouldn't get them until months later, and one of my important jobs was to see they got them more promptly, which meant not only to see that I got them myself, but to see that they went over to the other side.

Another situation was to keep them informed by any developments that may bob up in the newspapers or about any securities, starting off writing weekly reports. Of course, they wanted to be

informed about their own position. I used to send them copies of the deposit slips so that they would have some idea of their United States bank balances.

They were also very interested in getting certain statistical index figures. I think the Federal Reserve Bank and New York Times figures, and they used to get them late, and our job was to cable them over the moment they were released.

Q. How often?

A. Probably two cables a week. We would cable to one of the companies and they would pass it on to the other two. Naturally, there is no sense of three cables all going to the same place.

28 Then another important factor involved these matters of reorganization.

In 1936 and 1937 there were quite a few recapitalizations going on, the companies trying to clear up arrears and preferred shares by some recapitalization, and trying to provide a surplus, or in some cases, merely to cut down the preferred dividend rates, and they would get notices the stockholders were being asked to authorize the issuance of so much bonds, and they never knew what it was.

One of the important things was to check upon all these matters and find out what was what, and not only to get the nominee to sign proxies in favor or against but to let them know so that they would know whether to get active and so on.

They used to work particularly through an association of British investors acting for a number of British companies.

Q. Did you have any authority with respect to proxies, that is to say, did you have authority to have proxies for those soliciting proxies?

A. I had authority to direct the nominee companies to sign the proxies, because the proxies had to be signed by the nominee in whose name the shares were registered. I could not sign them and I would direct the nominee to do that.

Q. What was your practice with regard to communicating with the home office about proxies?

A. If the proxies were for a meeting in which there was nothing special coming up, just an ordinary annual business meeting, I would decide whether or not to issue the proxy or order it on my own responsibility without communicating with the head office at all.

As a rule, I issued the proxy because we found it advantageous to be nice to the managements, and sometimes we would want to ask them for a favor, and they would reciprocate when we wanted something done, and where there was a reorganization or recapitalization involved, I endeavored to get the circumstances and all background over to the stockholders so they would know what

was going on, and if they had any specific instructions to advise and if they did not have anything they wanted me to do, then I decided myself whether the proxy should be issued or not.

Q. Did you have any uncontrolled authority regarding the disposition of stock rights or warrants?

A. Yes; in the case of—I am not sure whether it applied to three companies or the two British Assets Trusts, but with respect to what they called stock rights or dividend shares, I had the responsibility or authority alone to authorize and direct the sale of those rights, or script, which is the term they usually used.

29 In that respect I alone could do it on my own responsibility, without any authority by any officer or director.

Q. What authority did you have with respect to the selection of certificates to be delivered in the case of sales of securities?

A. Well, I used to direct the custodians to deliver specific securities when it seemed necessary, and where they were delivering only part of total holdings. I think in the case of Morgan they made a special point of having been advised by the directors that I had the authority to do that. I think in the case of National City Bank they did not ask for any special authority. They merely accepted my instructions when it was necessary.

We did not do it on every single sale of securities; only on those it was necessary to do it on.

Q. What do you mean "necessary"?

A. For example we had no problem, if the company owned 5,000 shares of stock and they were selling 5,000, likewise if they bought 5,000 and were selling part of it.

Our problem would come up if they were selling different shares at different dates so that we did not know which ones they were selling.

Q. I believe you testified that the coupons on bonds were clipped by the bank custodian and interest collected direct by the bank. Do you know what is the regular practice of bondholders in collecting their coupons; whether foreign or domestic owners?

A. Well, exactly the same thing; they would clip them and give them to the bank for collection. It is just a matter of who cuts them off the certificates. That is all.

Q. Were checks drawn by you of the office here to pay for securities purchased?

A. No checks were ever drawn for securities purchased. You see what would happen, the company would give a broker an order. Usually it would be some broker, of course—on the other side, because they pay cable charges and those brokers would then call their correspondents over here and they would buy their securities and they would be directed to deliver the securities to the bank.

against payment, and if any checks were drawn they were drawn by the bank.

I am not so sure that that was required all the time, because the broker might have an account with that bank and say, credit our account.

In any event, they never draw the checks themselves. There might be an occasion when that might happen, but that wasn't the procedure.

Q. In the case of the sale of securities, were the proceeds of sales received by you, or the office here?

30 A. No; that was worked the exact opposite. The bank or custodian would be directed to deliver to the broker against payment. Usually a flexible payment, because we were never sure of the exact amount of dollars we would have to pay.

Instructions would be, say sell U. S. Steel at 60 to 61, and we wouldn't know whether they would get 60 or 61; or somewhere in between, and the banks would be authorized to deliver U. S. Steel against x-dollars, which would be a few hundred either way.

Q. Are you familiar with the manner in which local investment trusts or domestic investment trusts, usually keep their securities and handle their transactions on sales and purchases?

A. Well, the majority of local investment—

Q. Are you familiar with them?

A. Yes.

Q. Do you know of the operation of any of them?

A. Yes.

Q. How do they handle their securities so far as safekeeping and so far as purchases and sales go?

A. Well, there were several different methods. They all keep them in some nominee's name. They don't keep them in their own names because of the difficulty that it is almost impossible to make delivery in a corporate name, because you have to submit the authority of the board of directors to transfer, and they all use nominees in one way or another. They do a good many things. A great many leave their securities with brokers, the brokers through whom they have purchased the securities. Others deposit them with bank custodians, the same as we did, and leave them with bank custodians.

Probably a few, especially the large ones, may have their own nominee firms, and in that way keep the securities in their own vaults in their own nominee's name, of either an individual or nominee company.

Q. What is the domestic custom regarding payment for securities purchased, or customs, would probably be more correct?

A. Well, they rather vary. In some cases they operate the same as we do, direct the brokers to deliver to the banks or receive from the banks against payments.

In other cases they would keep accounts with brokers and they will merely buy and sell through that broker, and either deposit money with the broker or withdraw according to how the balance works.

Our companies here never had any balances with brokers at all.

Q. Mr. Cooper, going back abroad for a moment, you stated your firm represented quite a large number of British investment trusts. What can you say as to the amount of investments of Scottish American Investment Company, Ltd., as compared with the other largest clients, investment trust clients?

Mr. THOMAS. I did not hear the question.

Mr. FISHER. I will repeat it.

By Mr. FISHER:

Q. What can you say as to the relative size or amount of investments in American securities of Scottish American Investment Trust as compared with the other largest investors among your British investment trust clients?

A. Well, so far as what you might call security investors are concerned, Scottish American had by far the largest amount invested in United States securities. It's probable that a company called the Alliance Trust which has a great deal of farm mortgage investments had more money invested in the United States including these farm mortgages, but Scottish American was by far above the biggest other investor in the United States, and that includes my own clients and other Scottish investment trusts.

I won't elaborate, although it's the biggest client that I know of.

Q. What about British Assets Trust and Second British Assets Trusts as to their relative size?

A. They are in exactly the same position in the sense they were bigger than any other except Alliance and Scottish American.

Q. Were you in the offices of the Scottish American in Edinburgh?

A. Yes.

Q. Did you get any impression as to the size of their office space; the number of their staff?

A. Well, their office was located in a part of Edinburgh that used to be a residential section and it consisted of something like equivalent of our old brownstone houses up in the 40's, and so on.

There were two such buildings in that they knocked the walls out and that constituted their office, and I think it was at one, two, three—1, 2, 3 George Street. I should say it was an awful cut-up affair, with rooms in the middle that had no light in them. I think probably they had a dozen rooms.

You can get a good idea if we visualize two or three of these Washington Square buildings with the walls knocked out.

Q. Did you visit the offices of the British Assets Trust and the Second British Assets Trusts?

A. Yes.

Q. What can you say about the size of the space occupied there?

A. That is a little bit more difficult because they had a secretary who was really a firm acting as a secretary, called

32 Ivory & Syme, and Ivory & Syme were carrying on any other business they wanted to, right in the same premises by the place that represented their office, and Ivory & Syme's office was another residential building, probably a little bit larger than any one of the two buildings that made up the Scottish office, but it was only one building, so that as a whole, the office was smaller than the Scottish office. But how much work was done there in addition to the work of the British Assets Trust, I don't know.

Q. Would you be able to state, approximately, the number of persons employed by Scottish American in this office you saw?

Mr. THOMAS. I don't believe the witness is qualified.

Mr. FISHER. I asked him if he would be able to state the number.

The WITNESS. Yes, within a spread of maybe four or five.

By Mr. FISHER:

Q. Will you state?

A. I should say the Scottish, they probably had about 15.

Mr. FISHER. That is all.

Cross-examination by Mr. THOMAS:

Q. Mr. Cooper, each of the petitioner companies, did they have what is known as a board of directors over in Edinburgh, did they not?

A. That is right.

Q. I believe you stated that the principal purpose of these petitioners was to keep funds invested consistent with safety?

A. Their entire purpose; right.

Q. To provide a return to their shareholders and of course their bondholders?

A. Yes, sir.

Q. Matters of policy as to those matters were handled by the board of directors in Edinburgh; isn't that correct?

A. That is right. You see, it had to be, because they are only concerned with Sterling and I couldn't get the Sterling picture on this side.

It might be a desirable thing to buy securities from the point of view from the United States residents and the wrong thing to do from the point of view from the fellow who has to take it over in Sterling.

They decided all their policies over there.

Q. Wouldn't you say, Mr. Cooper, that except for our own Federal income tax laws, no office would have been set up here for any of the petitioners?

A. On the contrary, it was seriously discussed before we even thought of income tax laws. The income tax laws raised the question because they had not paid their taxes, and it cost them more than if they had an office.

They had some years before an office. What finally convinced the directors, is a matter that is in their minds, and I don't know—

Q. Just previous to the setting up of the office there had been considerable discussion over our own Federal taxes; had there not?

A. It was the fact that they had failed to pay the tax when they should have had, and they had to pay a lot of interest because of the delay.

Q. And when you went over there, you went over with Mr. Breeding, I think it was in September?

A. Yes, sir.

Q. You discussed with them the provisions of the Revenue Act of 1936?

A. That was discussed with all our clients over there. After all, these folks just found out about United States taxes and all of a sudden it turned upside down again, and they don't know anything about it.

Q. I don't know whether I exactly understood your testimony as to why the nominees were changed in December, 1936. Did I understand you to say that was because one nominee—you could have one nominee for all the securities of each of the petitioners?

A. That is right.

Q. Who would not be a nominee for any other company?

A. That is right.

Q. Now, these nominees, after change, were still employees or associated in some way with J. P. Morgan?

A. The nominees were partnerships, consisting of partners or employees of the bankers who made up the partnerships.

Q. I suppose prior to that change, any nominee for Scottish American might also be a nominee for other companies, and the dividend checks might come in that way, and it would cover the stock list for both companies, and the dividend would have to be split-up?

A. That would happen if the bank would receive a dividend of X dollars, and they would credit it to the owners of the stock listed in that nominee's name.

Q. Mr. Cooper, you stated a while ago that you rented space for these companies in somewhat of a rush or hurry?

A. Well, because they said open the office on the 2nd of December by cable and this meant going out and get office space. It happened that December is a very busy time for a public accountant and I could not hop around and make the best arrangements anyway. I had to get started.

34 Q. Why were they so anxious to open it up December 2nd rather than January 1st?

A. I think they were conscious of the facts that if they opened in December, the new basis would apply to 1936, and we knew for 1936 they would probably pay less taxes as a resident, and I was very careful to tell them in 1937, it might be the exact opposite, so they knew they would save some tax in 1936.

Q. Along about the end of 1936, and the early part of 1937, there was correspondence passed between you and the office in Edinburgh with respect to whether you should get a ruling from the Treasury Department or whether you had complied as a resident corporation?

A. I think we had some with the Treasury Department. It was with respect to these various companies who were paying us the dividends and we called their attention to the fact that we were a resident foreign company and they should not withhold the tax because there was a foreign company name to the check, and we called their attention to the fact that was being paid to a New York office, and they should not withhold. I don't think we had any correspondence with the folks on the other side, but we sent them copies of all our correspondence.

Q. Was that true with regard to all these resident corporations over here?

A. No; because many of them did not withhold the tax in the first place. Only those that withheld the tax that we had to take it up with them.

Q. Didn't it take a matter of two or three weeks to get these nominees changed?

A. No; once it was decided, that was done in a day or two.

Q. But the corporation paying the dividend would have to know the change?

A. At that time they were making transfers in two or three days at the outside.

Q. Didn't quite a number of the checks for dividends that were paid in December, didn't quite a number of them get to the bank direct?

A. Yes; because you see, a corporation will pay a dividend December 28th to stock of record of December 5th. We might not get our shares transferred until December 6th, but the dividend would go to the record owner of December 5th, so that is why many dividends, especially December 15th would go to the bank because we did not get the nominee changed, and the mandate in, before December 15th.

Q. Mr. Cooper, tell me this, if you can—when the dividend checks started to be mailed to your office over here, you, as
35 I understand, would have them endorsed and stamp them and deposit them in the bank?

A. I was authorized to endorse checks to deposit, and our bank deposit here is not as strict as it is on the other side.

Q. Do you know what difference that would make with respect to the bank's duties in receiving the funds; the checks?

A. You mean the fact of putting a rubber stamp on?

Q. Well, would it change the actual work or duties of the bank any? As I understand it, the original checks came to the bank?

A. In the first place, the bank had no responsibility to see that we got our dividends. We had to do that ourselves.

In the second place, the bank did not have to take the check and find out who owned the stock and who was entitled to the proceeds and make the proper entries.

Q. Each of the two banks, J. P. Morgan and National City Bank still continued to make the same charge for their services beginning in December 1936 as they did before?

A. No, sir.

Q. Wasn't their method of charging before and after the same?

A. In the case of National City Bank, they used to charge a custodian fee. They called it an activity fee. They also used to charge an income-collection fee, which was a percentage of the income. After we took over the collection of the income they charged only the custodian or activity fee, and they charged no fee for collecting income. That is National City Bank.

In the case of J. P. Morgan & Company, they were then, as I understood it, in the process of changing their method of charging for these custodian services. You may recall that all the banks were trying to raise their charges for all these services matters, and in the case of the British Assets Trusts they had put them on the basis of charging for custodian services.

In the case of the Scottish American they had been making no custodian charge as such. They would merely charge them a percentage of the income collected.

It so worked out that a percentage of the income collected involved less cost to the companies than if they had paid on a basis of custodianship which involved a percentage of the value of the securities for holding them, so they made an arrangement then to continue the usual charge which was less than we would have paid if they put it on the regular custodianship basis.

Q. With respect to the National City Bank, you say they, beginning with December 1936, cut out that charge based on the income of collection?

A. That is right.

Q. What was the other charge they made?

36 A. I think they called it an activity fee; for taking the securities in and taking them out.

Q. And that was on a certain percentage of the value of the securities or the par value?

A. I think it was a flat fee; so much per share.

Q. You mean so much per share for handling?

A. So much per share of stock.

Q. Was that rate increased when the other charge was dropped?

A. No; same rate.

Q. Well, now, J. P. Morgan & Company, that is with respect to Scottish American Investment Company, and their account with British Assets Trust, didn't they continue to charge one-fourth of one percent of the income for collection?

A. I think that is true on Scottish American. I don't recall the rate, but there was a percentage of income deposited, not income collected, but in the case of British Assets Trust there was no charge based on income at all. It was based, I think, on the value of securities.

Q. But that wasn't changed, in connection with the British Assets Trust, the charge for handling securities, wasn't changed, was it, in December 1936, or about that time?

A. Well, I don't know whether they changed the rate. The method was exactly the same. The rate would have been changed, and I wouldn't remember.

The MEMBER. We will recess for five minutes. (Recess.)

By Mr. THOMAS:

Q. Mr. Cooper, as far as purchases and sales of securities through brokers in this country, the method wasn't any different after 1936 then it was before?

A. Not that it was immediately so.

Q: That is what I mean. In the early part of 1936 and 1935?

A. Right.

Q. In other words, there was no change in that method by the setting up of the office over here?

A. Most of the orders still went through brokers on the other side.

Q. In other words, it was the directors of each company over there that decided what to buy and what to sell?

A. Exactly.

Q. And your advice would sometimes be sought on what certificate would be best to sell for tax purposes?

A. It went further than just what certificates. Sometimes they want to know what the effect of the change of the securities were, and they might have influenced their purchase or sale. There was change about the brokers. That was after the office was
37 open, all brokerage advice went to us rather than over on the other side.

Q. You mean they sent copies of statements to you?

A. They sent them to us; not the copies.

Q. Wouldn't you say, Mr. Cooper, that practically all of the work done by your office over here was confined to the recording and handling of dividend checks, and the recording of the securities owned and changes from time to time in securities owned?

A. And receiving the dividend and interest items. That was the main thing, and seeing that we got everything we were entitled to.

Q. That constituted most of the physical work done in the office?

A. That is right.

Q. Well, now, as far the actual funds of the petitioner are concerned, would you say that what your office did over here was receive dividend checks and pay organization and administration expenses, incidental to the receipt of the dividends?

A. And taxes.

Q. What is that?

A. And taxes.

Q. Of course, this office over here had nothing to do with making distributions to the stockholders of petitioner corporations?

A. No.

Q. And nothing to do with payment to petitioners' bondholders?

A. No.

Q. And as a matter of fact, the stockholders and bondholders of the petitioners were nearly all foreign citizens, were they not?

A. Outside of the United States?

Q. Yes.

A. Yes; there were some over here and we were used to send those who were over here all our statements as they were issued.

Q. Was a large part of the stocks or bonds of these three petitioners owned by insurance companies over in England or Scotland?

A. I know that insurance companies were big holders. I don't know enough about the exact amounts to say a large part.

Q. Do you know how much of the stock interest in Second British Assets Trusts was owned by British Assets Trust?

A. I think it was a little over fifty percent.

Q. This was the stock—

A. Ordinary shares, probably none of the so-called preferred shares or debentures.

38 Q. Would you say that this statement is correct, Mr. Cooper, that management of the petitioners' affairs is largely in the board of directors operating from the company's head office in Edinburgh, Scotland?

Mr. FISHER. I object, Your Honor; it seems to me that calls for a conclusion. It is entirely argumentative what the position of the board of directors is. This witness is no more competent to answer that than your Honor is by his own observation.

The MEMBER. I will overrule the objection.

The WITNESS. Will you repeat that question again?

Q. Would you say that this statement is correct, Mr. Cooper: management of the petitioners' affairs was largely in the board of directors operating from the company's head office in Edinburgh, Scotland?

A. It is all right if you say largely in the board of directors, because I hate to say where they are operating from. They may operate from wherever they happen to be, because they are merely part-time engagements on these companies. They really had other jobs.

Q. I know, but a board of directors, that is the board of directors of each of these petitioners, you wouldn't compare them exactly to a board of directors of one of our own domestic corporations, would you?

A. In one respect they are quite similar, and in another respect they are not. They are not like our boards in the sense that they take a closer interest in actual operations. They are somewhat like our boards in that they meet periodically, and that is the only time they have to do with these companies, except they are thinking about them all the time.

Q. I show you a letter directed to Mr. C. R. Krigbaum, Internal Revenue Agent in Charge 90 Church Street, New York, dated April 14, 1939. That is your signature, is it not?

A. Right.

Q. On page 2, paragraph 2, about the middle of the paragraph, will you read what you have stated with respect to what it is?

A. "The directors of these companies are very active, meeting weekly or more frequently as may be required, and the purchase or sale of securities can only be ordered by action of the Board, no individual having general authority to make such transactions."

Q. Those statements are correct?

A. They are correct, but I am not sure that all through the period they met that frequently.

Q. But they met frequently?

A. They met officially twice a month, and as often in addition to that as circumstances required.

39 Q. Just what does the firm of secretaries do?

A. The same thing as I do. The securities are in the custodian account, with the bank, and they record the income and they do distribute the payments to shareholders, which I did not do or know anything about.

Q. At 120 Broadway, Mr. Cooper, wasn't the telephone number of these three petitioners the same as the telephone number of Barrow, Wade, Guthrie & Company?

A. I think what we did was to put a special number on their wire, but I insisted on it being hooked up with our board. I didn't want to keep running down to the 26th floor. I was on the 27th so that I insisted on hooking it through our board, so that our operator could get me.

Q. Wouldn't it be listed in the telephone book under the same number?

A. No, I am not sure, but I don't know how it was done. That can be verified by the book.

Q. Well, now, I believe you had authority to write the checks up to the extent of \$5,000 per month?

A. That is right.

Q. As a matter of fact, the actual checks that were written were much less?

A. One month it ran over and I had to get special authority.

Q. But it didn't run \$60,000 a year?

A. No.

Q. So that in general you wrote much less than \$5,000 worth of checks a month?

A. Yes; I should say on the average. It varied according to the circumstances and conditions and what had to be paid each month.

Q. And most of those checks were for quite small amounts?

A. Well, if you take it from the point of view of the number of checks that would be a correct statement, if you take it in the point of view of dollars, why, the biggest amount was paid in the larger checks.

Q. You would say, would you not, that most of the securities owned by the petitioners were of a stable class of securities as distinguished from speculative classes?

A. Oh, yes, except some that became speculative after the passed dividends, like some of the preferred stocks that were stable at one time, and then ceased to be.

Q. The object was to invest money in stable stocks?

A. Absolutely.

Q. I believe you stated that you had been with Barrow, Wade, Guthrie & Company for some years prior to 1936?

A. Yes.

40 Q. I believe you said you were an employee for a number of years, say, up to 1926 or 1927. Did you do accounting work in those years?

A. Oh, yes; I was a certified public accountant and have been since 1924, I guess, and prior to that I was doing accounting work, but I wasn't a certified public accountant.

Q. And your association with Barrow, Wade, Guthrie & Company then is as an accountant and expert along that line?

A. Yes.

Q. And you have never been connected with investment companies, have you, in any official capacity?

A. No.

Q. You have never been investment counsel, have you?

A. No; except in one respect that I did a good deal of work on valuation of securities which is something along the same line of investment work.

Q. How about the ownership certificates that have to be filed with the Federal Government, who prepared those, do you know?

A. Ownership certificates; you are referring to bonds or stocks?

Q. I have a bunch of ownership certificates in my file, that have J. P. Morgan printed on the back of it. I want to know did you make those out?

A. I don't know that any were necessary except possibly with respect to some bonds, and of course in 1936 they would be all in the period prior to the time we had the office.

Q. For any of these years, did your office make out any?

A. I think a few on bonds, but none on stocks, so far as I know.

Q. Your authority to act for petitioners over in this country was contained in a resolution of each of the companies, appointing you as assistant secretary and giving you certain powers; is that correct? In other words, that is your authority for acting?

A. I think that is a correct statement. Of course, there is a number of things that aren't covered specifically. I think you really should say that those are matters on which action of the board is required to grant authority, such as the signing of checks and things like that.

Q. Well, now, prior to the time you acted over here in this country, weren't the petitioners getting financial reports and financial magazines and things of that kind; Standard Statistics, for instance?

A. The public services they were getting, some of them, but the financial reports of the company in which they owned securities, they were not getting a great many of them, and those they got, they usually received much too late to do them any good, or at least not as rapidly as they wanted them.

41 Q. I show you, Mr. Cooper, a copy of a letter sent to you dated December 9, 1936, by the Scottish American Investment Company, Ltd., and signed by J. R. McLaren, Secretary. Do you remember getting that letter?

A. Yes.

Q. Would you read the letter aloud, please?

A. "As you are no doubt aware it has, up till now, been the practice of Messrs. J. P. Morgan & Co. to charge us commission of 1% on all income collections made by them on our behalf. In future of course, you will be making the income collections, but my Directors wish Messrs. J. P. Morgan & Co. to continue to receive the same commission as in the past. I shall be obliged if you will arrange for this to be done, either by handing Messrs. J. P. Morgan & Co. a cheque at the end of each month, or by paying them each time a lodgment of dividend cheques is made, or by Messrs. J. P. Morgan & Co. debiting our account each time dividend cheques are cleared through them. From our point of view, the actual procedure to be adopted is immaterial, and I shall be glad if you will arrange to follow the method most suitable to Messrs. J. P. Morgan & Co. and yourself."

Mr. THOMAS. I offer this copy of the letter in evidence.

Mr. FISHER. No objection.

The MEMBER. Received.

The CLERK. Respondent's Exhibit A.

By Mr. THOMAS:

Q. I show you, Mr. Cooper, copy of a letter dated December 23, 1936, from the Scottish American Investment Company, Ltd. in Edinburgh—no, this is a copy of a letter from you directed to the Scottish American Investment Company, Ltd., in Edinburgh, dated December 23, 1936. Do you recall that letter?

A. Yes.

Q. Will you please read what you stated—that letter was signed by you?

A. The original was.

Q. Will you please read what you have stated therein, with respect to commissions to J. P. Morgan & Company?

A. (Reading). "I discussed with Mr. Bushnell of J. P. Morgan & Co., the subject-matter of their commissions and have arranged with them to submit to me each month a bill which of course will be for services in maintaining the securities, etc., rather than collecting income, but which will be in an amount sufficient to provide them with the same amount they would have received under the former method. In payment of this monthly bill I will send them a check.

42 "In this connection, however, it should be observed that in the past the $\frac{1}{4}\%$ was applied to the amount collected, and to the extent that tax was deducted the percentage was applied to the net amount. We expect now to receive all collections gross without deduction of tax, although there will be instances from time to time in which taxes will be deducted until we satisfy the paying agents as to our status as resident foreign corporation. Accordingly, we would appreciate your definite instructions as to whether the commission is to be paid on the gross amount which will in fact be collected or on the net amount that would have been collected for your account if the office had not been established."

Q. Mr. Cooper, I have here a copy of another letter addressed to you from J. R. McLaren, Secretary of the Scottish American Investment Company, Ltd., dated February 11, 1937. Is there any mention made in that about commissions or charges for services performed by J. P. Morgan & Co., Inc.?

A. Will you repeat that?

Q. I just asked you if there is anything in that letter relating to commissions to be paid to J. P. Morgan & Company, Inc.?

A. No.

Q. Is reference made in that letter as to how it should be handled?

A. No.

Q. Will you explain what that letter means?

A. This letter is really dealing in the manner where J. P. Morgan used to credit to a collection account after deducting their own commission instead of depositing in a general account. It being a sort of intermediate accounting arrangement there. It really has nothing to do with the payment. It merely says the collections after deduction shall be handled in a certain way.

Mr. THOMAS. I offer that copy of letter in evidence as—

Mr. FISHER. No objection.

The MEMBER. Received.

The CLERK. Respondent's Exhibit D.

(Received in evidence and marked "Respondent's Exhibit D.")

By Mr. THOMAS:

Q. What did you say your authority was as to the giving of proxies?

A. Well, I had authority to direct the nominees to issue proxies to the particular persons who I wanted them to name. Now, this was the way it was ultimately developed. Of course, originally, when the question first arose, there was considerable question about what authority I had. Finally, it was worked out for the two British Assets trusts, they left the thing almost entirely to me. They even did not want me to let them know what it was. In the case of Scottish they wanted me to let them know if it involved reorganizations and matters affecting their shareholders as compared with other shareholders, and then they were to tell me whether a proxy should or should not be issued, and in a few cases where they did not come back, I ordered them issued anyhow.

Q. Here is a copy of a letter dated March 9, 1937, addressed by you to the Scottish American Investment Company, Ltd., in Scotland. The letter is quite lengthy. You have reference in that letter to the sale or exercise of rights and sale of odd shares of stock. Will you please read what you have stated with respect to that subject matter?

A. (Reading.) "Messrs. J. P. Morgan & Co. also feel that they should have your specific authority to accept and follow my instructions when issued with respect to the sale or subscription of rights, sale or delivery of odd shares, etc.

"While in most case you will issue your instructions in respect to these matters direct to Messrs. J. P. Morgan & Co., there may be infrequent occasions when because of the shortness of time, or for other reasons, it will be necessary for instructions to be issued by this office. You will understand, of course, that I will do so only at your direction.

"Will you therefore please authorize Messrs. J. P. Morgan & Co. to accept my instructions in this respect."

Mr. THOMAS. I offer this copy of letter in evidence.

Mr. FISHER. No objection.

The MEMBER. Received.

The CLERK. Respondent's Exhibit E.

(Received in evidence and marked "Respondent's Exhibit E.")

By Mr. THOMAS:

Q. Mr. Cooper, I show you a copy of a letter addressed to you from the Secretary, Mr. McLaren, of the Scottish American In-

vestment Company in Edinburgh, dated March 17, 1937. There is mention made on page 2 of that letter, to certain foreign securities. You don't need to read it out loud, but please read the part relating to those securities. What I want to ask you, Mr. Cooper, is, were some of the foreign securities held and kept by the main office in Edinburgh, Scotland; that is, with respect to the Scottish American Investment Company?

A. Yes; there were certain, not only foreign securities, but I think they had a couple of United States securities.

Q. I show you a copy of a letter dated March 30, 1937, addressed by you to the Scottish American Investment Company, in Edinburgh; on page 3 of that letter you refer to trouble 44 getting the statements from the brokers. I wish you would explain that, please? You might read that paragraph at the top of the page. Read it out loud.

A. Well, that relates to the fact that after I was appointed Assistant Secretary, I notified all the brokers that I had been appointed to that office, and we had our office at 120 Broadway, and I asked them to send all statements to us, that is, statements of purchases and sales.

Well, we went into two difficulties. One was that after many years after sending these confirmations abroad, they still did it, and we also had some difficulties that sometimes the transactions would come from the other side to British brokers who did not indicate that it was for the Scottish American or some of the others, so that the New York brokers did not know that we had anything to do with it, and we eventually got it straightened out all right, but after the first couple of months we still had a little trouble.

Q. I have here, Mr. Cooper, a copy of a form letter that was sent by J. R. McLaren, Secretary of the Scottish American Investment Company, to their New York correspondents, and brokers. Will you please read that letter aloud?

A. This is dated the 2nd of December 1936 [reading]: "We have now established an office at 120 Broadway, New York, and Mr. Walter A. Cooper of Messrs. Barrow, Wade, Guthrie & Co. has been appointed Assistant Secretary of the Company to take charge. We shall be obliged if you will forward to Mr. Cooper copies of all Contract Notes, cash and delivery advices, and statements of account in connection with any transactions which we may have with you on or after today.

"We shall be glad, if you will continue to send the principals of all such documents direct to us as heretofore. All letters in connection with our investments should be sent here as previously, and all instructions regarding transactions will be sent from here."

MR. THOMAS. I offer this letter in evidence.

MR. FISHER. No objection.

THE MEMBER. Received.

THE CLERK. Respondent's Exhibit F.

(Received in evidence and marked "Respondent's Exhibit F.")

MR. THOMAS. That is all.

Redirect examination by MR. FISHER:

Q. In your earlier cross-examination, did you say that the original advices from brokers or copies of advices from brokers came to the office at 120 Broadway and later Journal Square?

A. I think I said the originals.

45 Q. Is that correct?

A. In cases of the two "Bats," that is what we call them, I think I got the originals, and in the case of Scottish American we got the originals.

Q. You said the two "Bats."

A. I mean the British Assets.

Q. You were shown a voucher for \$13.77 by counsel for respondent, and I ask you if that voucher describes the expenditure for which that was drawn?

A. I wasn't shown the check.

Q. You were shown the check stub?

A. I don't remember that.

Q. Show you a voucher form, and ask you to state what that shows?

A. Well, this is a bill from the Haskell Printing Company, for letterheads and envelopes, and carbon copy sheets.

Q. For how much?

A. \$13.77.

Q. Dated what?

A. 7th of December.

Q. What year?

A. 1936.

Q. Were letterheads gotten for all the companies?

A. Yes; the three of them.

Q. What address did they show?

A. Well, they first showed the address at 120 Broadway, and later 26 Journal Square.

Q. Did you get any letterheads when the office moved to Journal Square?

A. We did.

Q. Mr. Cooper, did these companies make any New York State tax returns?

A. Yes; they filed New York State franchise tax returns.

Q. Did these companies after they moved to New Jersey file any New Jersey State returns?

A. Yes; a State franchise tax, and also qualified to do business in New Jersey, and that involved the filing of certain reports and statements:

Q. Did it require annual reports?

A. That was the actual franchise tax.

LEONHARD A. KEYES, called as a witness on behalf of the Respondent, being first duly sworn, and testified as follows:

46 Direct examination by Mr. THOMAS:

Q. Your name is Leonhard A. Keyes?

A. Yes, sir.

Q. Will you please state your business connection?

A. Vice president of J. P. Morgan & Co., 23 Wall Street, New York.

Q. And how long have you been an official of J. P. Morgan & Co.?

A. Since April 1, 1940, with J. P. Morgan & Co., Inc., a trust company; and from 1903 to April 1, 1940 with the copartnership of J. P. Morgan.

Q. The trust company succeeded to the business of the partnership?

A. It did.

Q. Does J. P. Morgan & Co. handle the custodian accounts for various corporations?

A. Yes, sir.

Q. Are you familiar in general with the handling of those accounts?

A. Yes, sir.

Q. Was J. P. Morgan & Co., during the years 1936 to 1939 inclusively, as well as before and after those years, custodian of securities owned by the Scottish American Investment Co. and British Assets Trust, Ltd.?

A. It was.

Q. Do you know how long they had been custodian for those companies?

A. For the Scottish American Investment Co. since prior to 1903, possible since 1902, and their business agent and so forth for the British Assets, some year or two prior to 1936; I don't recall exactly how long.

Q. Will you state the duties performed by your company, J. P. Morgan & Co., the general duties with respect to the handling of those securities?

A. Of these two companies?

Q. Yes.

A: The general duties at first consisted of our giving their securities the same care and attention and safe keeping that we would give to our own securities, collecting the income, forwarding to the companies the various notices that would come in from corporations in regard to proxies and special meetings, annual reports, and such like that the corporations would give.

Q. Then your duties consisted of collecting the income also?

A. It did; yes.

47 Q. Did your company render financial services in the way of furnishing information about the corporations whose securities you held in custody accounts?

A. Yes, sir.

Q. Did the Scottish American Investment Co., Ltd., and the British Assets Trust, Ltd., ever borrow money from J. P. Morgan & Co.?

A. I think they did; I haven't refreshed my recollection on the facts, but I am reasonably sure that they did borrow from time to time.

Q. Now, I take it then, that the dividend checks for all the years in which you were handling their accounts were deposited to the credit of the Scottish American and the British Assets Trust?

A. On securities that we held?

Q. On securities that you held in custody for them.

A. There was a little difference in the account of the Scottish American.

The normal procedure with all custody accounts is that we could carry the securities in the name of our nominees who would be directed to have the dividends made payable to J. P. Morgan & Co. and they would be collected and when received in the office, they would be credited to the corporation.

Q. The address of the nominees was care of J. P. Morgan & Co.?

A. Always care of J. P. Morgan, and our nominees would give directions to make it payable to J. P. Morgan & Co.

Q. Then, I take it, your company carried an account in which were recorded the collections of dividends from the securities?

A. We did.

Q. And that account continued through 1936 and subsequent years as well as prior thereto?

A. Yes.

Q. Prior to about December of 1936—let me withdraw that.

Prior to about December 1936, would the then nominee endorse the checks for deposit?

A. No. Our practice was that the nominee would always give the dividend order to make it payable to J. P. Morgan & Co. so that no endorsement would be required by the nominee.

The dividend order would be instructions to the obligor corporation to make it directly payable to the firm.

Q. I see. Would you say there was any material change with respect to the duties in handling the income from those dividend checks at or about 1936 as compared with the prior years?

A. Yes; there was quite a change in December 1936.

Q. What was the nature of that change?

48 A. The nature of that change was that we requested to issue the Scottish American and British Assets securities in the name of one particular nominee who did not have any other stock of that particular company for these custody accounts in his name and those nominees were called upon to issue special instructions as such nominees to the paying company to make the checks payable to the Scottish American Investment and forward it to their New York office.

Q. Well, I mean in the form of handling. Of course, the securities were always in the names of nominees, were they not?

A. Yes.

Q. That did not entail any change in the method of handling the actual methods?

A. I call that a change in method.

Q. With respect to the Scottish American Investment Co., Scottish American, Ltd., how are the charges for the services performed by J. P. Morgan & Co. determined?

A. May I refer to a memorandum?

Q. Yes.

A. The charges to the Scottish American Investment Co. consisted of our charging them one-quarter of one percent for the collection of income and on the handling of securities where we were requested to take up the payment, to take up securities against the cash payment or deliver out securities against cash on the amount of the cash involved there would be a charge of one-sixteenth of one percent.

Q. Beginning about the end of November 1936, was any change made in the method of charging for services rendered to the Scottish American?

A. Those rates remained the same.

Q. The method remained the same also?

A. I would say substantially, yes; but there was a bookkeeping difference in the manner of handling it and instead of the Collection Department attending to the receipts and checking the collections and of the dividends, the dividends were all deposited by the Scottish American, and the collection accounts were listed to us that they did consist of dividends and coupon collections.

Q. Well, I would say referring to the actual method of determining the amount due.

A. No; the computation, as to the computation, the method was the same.

Q. Now, in connection with the British Assets Trust, Ltd., will you explain there the basis of the method of charges for services rendered by your company?

A. Well, that charge was our usual charge; the charge that we established some time in 1933, 1934, for the general handling
49 of all custodian accounts. That consisted of an initial charge of \$1 per \$1,000 bonds, and 10 cents per share for stock of the par value of \$100.

With rates computed up to \$500,000 the rate would be one-tenth of one percent, and the second \$500,000 one-fifteenth of one percent and all over a million dollars at one-twentieth of one percent.

Q. Well, is that yearly charge?

A. That is an annual charge.

Q. An annual charge?

A. Yes, sir.

Q. Is that based on the amount of the securities for which you are custodian, or is it based on the amount of transactions in and out of the account?

A. That is based on the amount of securities for which we are custodian.

Q. Did the charges so determined against British Assets Trust, Ltd., include compensation or remuneration to your company for all services rendered in connection with the handling of these securities and the collecting or depositing of the income?

A. That charge included all services.

Q. Was any change made beginning about the end of 1936 in the method of determining the amount of those charges?

A. No, sir; no change.

Q. No change from prior years?

A. No, sir.

Q. No charges were made at any time?

A. I would have to check the date of this British Assets account, it was opened, I think—it was opened after we had established this as a uniform rate against all custodian accounts.

Q. What I mean is from the time you started accounting for the British Assets Trust, Ltd., and the certain method of charging which was established, and there was no change in that method from that time on?

A. No, because their account was opened after this had been established as a uniform charge against all custodian accounts.

Q. In connection with the Scottish American Investment Co., no change was made as between the years prior to 1936 and subsequent to it?

A. No, sir; not for many years prior to 1936. There might have been a change in the early years. I didn't look that up, but I don't think so; these remained.

Q. By that you mean quite some time back?

A. Going back to 1902, when the account was first opened.

Q. Mr. Keyes, when securities were sold by either Scottish American or the British Assets through brokers in
50 this country, do you know what your authority was to deliver the particular series to the broker?

A. After 1936 our authority consisted of instructions that we usually received from the New York office as to what particular series would be delivered. Now, that I know, is particularly true of Scottish American and I suppose the same is true of the British Assets.

Q. If all of a certain stock of a corporation was sold, would you be apt to get any instructions from the New York office?

A. As to what?

Q. As to what series to deliver.

A. Hardly, because there, the whole issue would be going out; you see, the entire stock there would be going out and there would be one delivery against that.

Q. In general, I am including all years. How were you notified to send securities to the broker?

A. We received notice either by telephone or letter from the New York office where they were partial and where there was no notice; we would call up.

Q. That was with respect to a particular series to deliver?

A. That is right.

Q. I am speaking in general of prior to 1936. What would be the method, would you be notified by the broker or by the company?

A. No; by the Scottish American, by the client.

Q. From Edinburgh?

A. From Edinburgh, unless they had opened this New York office where we received most of the instructions from.

Q. Did J. P. Morgan & Co., ever act itself as a broker, as selling or purchasing agent for any of the securities?

A. Yes, sir; prior to April 1, 1919, we were members of the New York Stock Exchange and there would be transactions in which we had been engaged in buy and sell securities, the same as a broker would.

Q. The Scottish American Investment Co., Ltd., and the British Assets Trust, Ltd., had substantial funds, I mean cash funds, on deposit with your company at all times, did they not?

A. Mostly at all times. I think invariably they had a very satisfactory balance.

Q. Do you know approximately what that balance would be?

A. No; I wouldn't know offhand; it would vary.

Q. It might run from \$50,000 up to \$500,000?

A. \$500,000 may be a little large on that, but I would fix it—I would fix the estimate at \$50,000 to \$300,000, but Mr. Thomas, I would like to add that for many days there may be more than that, depending upon what their selling position would be.

31 Q. How were funds which came into the bank either by reason of sales of stock or the deposit of dividend checks, how would those funds be transmitted to the respective companies?

A. Well, they would be credited on our books. We were doing a business as deposit bankers, too, and we would credit this amount for them, and it would be the same as banking the account.

Q. What would happen if they wanted to withdraw?

A. They drew a check on J. P. Morgan, a J. P. Morgan check, the same as they would withdraw from any bank. In addition, they would also from time to time instruct us to take up securities paying cash against them, which would be the same as if they had vouched their money out. That would be on some letter of authority on which we had authority to recognize and accept the signatures.

Q. Would they sometimes send cash drafts in Scotland drawn on their account in your bank?

A. They would issue drafts, I think; yes. Where they were drawn, we couldn't always say.

Mr. THOMAS. That is all.

Cross-examination by Mr. FISHER:

Q. Mr. Keyes, if these companies were to transfer dollars—were to transfer funds abroad, what process would they use to get the transfers made?

A. May I just ask—

Q. If you don't understand—

A. I don't understand the question because I don't understand whether you are speaking of dollar transfers or whether you are going into the field of foreign exchange.

Q. Did they ever transfer dollars abroad?

A. Yes; I would say they did.

Q. Would that be a usual transaction or unusual?

A. I think it is rather unusual, it didn't happen very often.

Q. Generally, they would transfer it by purchase of sterling with their American dollars, wouldn't they?

A. If they did, we wouldn't know it because then they would merely draw a check on that for the dollars and we wouldn't know what the purpose of the check would be.

Q. I see. Did J. P. Morgan as a member of the Stock Exchange have the privilege of charging brokerage commissions on transactions that they executed for that company?

A. Yes; the regular stock exchange commission.

Q. Did you execute all of the sales and purchases for the Scottish American, let us say in 1935?

A. I don't think we did.

52 Q. Isn't it a fact that they had direct connection with a good many brokers?

A. Yes; I am quite sure they did.

Q. If they gave their purchase or sale order directions to a broker, it merely required J. P. Morgan to take up a purchase against cash payment, making cash payment or delivery for sale against cash received, did J. P. Morgan then receive any commission, brokerage commission on that transaction?

A. No, sir; no brokerage.

Q. You spoke of a new scale of custody rates, or methods of charging. You illustrated it by the British Assets Trust, the way that the charge was on the principal amount of securities in custody or safekeeping.

What method did you have prior to that new method?

A. Prior to that it was largely the custom to charge client, based on the income collections, but somewhere in 1931, 1932, with dividends being passed right and left and the dropping of income, the banks found they were not being adequately compensated and they revised the scale of rates based on the par value in the securities in their vaults which would be a steady and fixed charge regardless of income.

Q. Did J. P. Morgan & Co. derive any other revenue from having the Scottish American custody account, aside from this charge of one-quarter of one percent on income collected?

A. Only to the extent that a bank did consider an account with a substantial cash deposit as a source of revenue in that it used its deposit money for investments.

Q. Did it derive brokerage commissions?

A. No, sir; other than as I have stated where we would execute a purchase and sale order, where, of course, we derived brokerage commission.

Q. Isn't it a fact that quite a few years prior to 1935, for example, a large proportion of your purchase and sale orders were executed by J. P. Morgan and therefore in such early years they derived a good deal larger brokerage income from having this account than they did in later years?

A. In the early years, we got a very substantial part of the brokerage business.

Q. If the Scottish American account had been changed to your new scale of charges in or about 1936, would the revenue that J. P. Morgan derived for services been more or less on that scale than it derived from the old scale of charges?

A. May I take just a minute to make a mental calculation?

Q. It has been proved in this case that their cost of the securities on deposit with J. P. Morgan ranged from \$25,000,000 down to \$20,000,000 or \$21,000,000 during these four years, 1936 to 1939?

A. I was just making a computation. With a rough guess that they had \$15,000,000 with us and it was probably based on \$15,000,000, the rate for that at one-tenth of one percent, which would have been the basic charge scaled down to one-twentieth, would have amounted approximately to \$7,000, so that in all of those years the $\frac{1}{16}$ th and $\frac{1}{4}$ th was less than the new rate would have been.

Q. Even though on \$15,000,000?

A. On \$15,000,000.

Q. After you began to deal with the New York office of the Scottish American and the British Assets Trust, was J. P. Morgan thereafter charged with responsibility of collecting the income on the securities in its custody?

A. No, sir.

Q. What would you say as to interest on bonds held in custody?

A. As to the interest on bonds held in custody, we cut those coupons and collected those.

Q. As a matter of fact, how do bondholders generally collect coupons on bonds?

A. Invariably, they turn them over to the banks to collect.

Q. That is true whether they clip them themselves or whether somebody else clips them?

A. Yes, sir.

Q. Why does a bank have a nominee or nominee company?

A. I think the first answer to that is primarily for convenience of delivering securities, in good deliverable form. The Stock Exchange rules that securities registered in the name of the corporation are not a good delivery and must be transferred first either

to a nominee or the broker so as to avoid the necessity of delay, so that at the time of making those transfers, they are invariably kept in the name of the nominee.

Q. It is what is called in street language "a good delivery name," or "street name?"

A. "A good delivery" is the street language as distinguished from a good transfer. The stock in the name of the corporation is a good transfer when it is accompanied by proper papers, when its certification is required, when a resolution is required; all of which the bank takes the responsibility for by having these stocks in the name of the nominee and having ready on them for delivery when a sale is made.

Q. J. P. Morgan nominee was a nominee for a number of J. P. Morgan custodian clients, was it not?

A. I think these particular nominees were nominees in other companies, but when requested to place—may I myself understand your question?

Q. What is the name of your regular nominee?

A. We have about 40 of them.

Q. Well, the name of one is Shaw & Co.?

A. Shaw & Co. is a so-called nominee partnership consisting of a group of our employees who have formed a partnership for the sole purpose of serving in any nominee capacity the clients of J. P. Morgan & Co.

Q. Are a substantial number of the securities held in custody registered in the name of Shaw & Co.?

A. Yes; but many of our securities are also registered in about 40 different individual nominees.

Q. And checks would come in under instructions of your nominees payable to J. P. Morgan, and would any particular check necessarily be for any one customer of J. P. Morgan?

A. Not necessarily; one check may cover 40 or 50 customers.

Q. Why would that be?

A. We have stock of 40 or 50 accounts, let us say of the stock of U. S. Steel Corporation, standing in the name of one nominee and the Steel Corporation would pay the dividend and it would only issue its one check following the dividend order served upon it by the nominee.

Q. That is the reason, is it not, that it was impractical to get a dividend order or of a mandate with respect to the securities of Scottish American Investment Co. and British Assets Trust addressed to the issuing companies or their paying agents, is it not?

A. I didn't hear you.

(Question repeated by the reporter.)

A. (Continuing.) I am not sure I follow the thread of what you say.

The MEMBER. Will you please restate that, counsel?

Q. Let us withdraw that and start differently.

Q. Why was it deemed necessary to transfer the securities of Scottish American to a special nominee who was not nominee for any other of your customer's securities and the securities of British Assets Trust to another special nominee who was not nominee of the securities of any of your other customers?

A. The necessity is contained in the very fact that he should not have the securities of any other customers registered in his name because then there would be required the issuing of two dividend orders. Many of the companies refused to accept differently filed dividend orders too, so that they found it impractical in that respect.

Q. So it is true, is it not, that the nominee in his name each of each companies' securities were registered were able after that registration to issue directions to the issuing companies or their paying agents, as the case may be, as to the payment of the dividends, the sending of notices, annual reports, and the like, isn't that true?

A. That is true.

Q. You stated that prior to December 1936, J. P. Morgan & Co. sent annual reports abroad.

Weren't you mistaken about the annual reports of the various issuing companies?

A. I am not mistaken; they were sent where requested by the customers. Your particular clients may have not requested, but from about one-third we were informed to send annual reports which we would do.

Q. As to notices of meetings and proxy notices, wasn't it necessary to request from the issuing companies additional copies in order to send them to all of your customers?

A. Always, where we had more than one custodian account to one nominee.

Q. After December 1936, or thereabouts, did J. P. Morgan & Co. send any notices, reports, or proxy notices, to Scottish American Investment Co.?

A. No, sir.

Q. To the British Assets Trust?

A. No, sir.

MR. FISHER. That is all, your Honor.

MR. THOMAS. No further questions.

TAXPAYER'S EXHIBITS

Exhibit 5

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED.

OFFICE, 123, GEORGE STREET,
Edinburgh, 2, 3rd December, 1936.

W. A. COOPER, Esq.,

Assistant-Secretary,

*The Scottish American Investment Co. Ltd.,
120 Broadway, New York.*

DEAR SIR: I enclose certified copy of Resolutions passed at a Board Meeting of this Company held on 2nd December 1936, appointing you Assistant Secretary of this Company to take charge of our New York Office and defining your authority to operate on the Company's Bank Account with Messrs. J. P. Morgan & Co.

Your duties will in general consist of looking after the interests of this Company in the United States. As matters of regular routine you will be expected to attend to—

56 (1) the collection and lodgment in the Company's Bank Account of interest, dividends, etc., receivable by the Company;

(2) the payment of all local expenses, etc.;

(3) the keeping of records of all transactions in the United States (to enable this to be done I have arranged for our American Brokers, Bankers, etc., to forward to you particulars of all transactions with this Company);—

(4) the making of periodical reports (usually once a week) by cable and/or letter on economic, political, or other developments in the United States;

(5) the completion and filing of Federal Income Tax and Capital Stock Tax Returns.

You will be expected on instructions from this office—

(1) to represent the Company at Stockholders' and other Meetings;

(2) to obtain and forward statistical and other information, Company Reports, etc.;

(3) to attend to any other matters connected with the Company's business.

My Directors have fixed your salary at the rate of \$5,000 per annum. It is their intention, however, that this figure should be reconsidered and possibly revised in about six months' time. Your salary as stated, includes the cost of clerical assistance, office rent, etc., but it does not include out-of-pocket expenses in-

curring in respect of stationery, postages, cables, travelling, etc., which will be chargeable to this Company.

Yours faithfully,

J. R. McLAREN, *Secretary.*

Exhibit 6

THE SCOTTISH AMERICAN INVESTMENT COMPANY LIMITED

Copy of resolutions passed at Board Meeting held at Edinburgh, 2nd December 1936.

It was resolved—

“to appoint Mr. Walter A. Cooper, Assistant Secretary of the Company;

to instruct the Assistant Secretary to establish and take charge of an office of the Company at 120 Broadway, New York City, U. S. A.;

that the Assistant Secretary's salary be \$5,000 per annum, such remuneration to include the cost of clerical assistance, office rent, etc.;

57 that for the period up to the end of December 1936 the Assistant Secretary's salary be \$1,000 instead of at the rate of \$5,000 per annum;

to authorise the Assistant Secretary to endorse for lodgment in the Company's Bank Account with Messrs. J. P. Morgan & Co. cheques payable to the Company;

to authorise Messrs J. P. Morgan & Co. to honour drafts on the Company's Account signed by any one Director and the Assistant Secretary;

to authorise Messrs. J. P. Morgan & Co. to honour drafts on the Company's Account signed by the Assistant Secretary, provided the total amount of such drafts in any one calendar month shall not exceed \$5,000.”

Certified a true Copy.

For and on behalf of The Scottish American Investment Company Limited,

R. O. PITMAN, *Director.*

KENNETH MURRAY, *Director.*

J. R. McLAREN, *Secretary.*

Exhibit 13

BRITISH ASSETS TRUST LTD.,
9 CHARLOTTE SQUARE, EDINBURGH, 2,

2nd December 1936.

WALTER A. COOPER, Esq.,

Messrs. Barrow, Wade Guthrie & Co.,
120 Broadway, New York.

DEAR SIR: We enclose certified copy of Resolution passed at a Board Meeting of this Company held this date, appointing you Assistant Secretary of this Company to take charge of our New York Office and defining your authority to operate on the Company's Bank Accounts with Messrs. J. P. Morgan & Co. and The National City Bank of New York.

Your duties will in general consist of looking after the interests of this Company in the United States. As matters of regular routine you will be expected to attend to:

- (1) the collection and lodgment in the Company's Bank Account of interest, dividends, etc. receivable by the Company;
- (2) the payment of all local expenses etc.;
- (3) the keeping of records of all transactions in the United States (to enable this to be done we will arrange for our
58 American Brokers, Bankers etc. to forward to you particulars of all transactions with this Company);
- (4) reporting periodically (usually once a week, by cable and/or letter on economic, political, or other developments in the United States);
- (5) completing and filing Federal Income Tax and Capital Stock Tax Returns.

You will be expected on instructions from this office—

- (1) to represent the Company at Stockholders' and other Meetings;
- (2) to obtain and forward statistical and other information, Company Reports etc.

At the moment it is, as you will understand, difficult to fix a definite salary to be paid to you, but we suggest that to begin with until 30th June 1937 your salary should be at the rate of \$4,400 per annum. By the end of that time we shall both have had some experience of the amount of work involved, and we should then be able to come to an agreement as regards the annual rate of remuneration. The salary will cover clerical assistance in addition to your own remuneration. Office rent and out-of-pocket expenses incurred in respect of stationery, postages, cables, travelling, etc. will be chargeable to this Company.

For your services etc. during the period from now until the end of this year, we suggest that you should receive \$1,000, but this figure would also be subject to revision.

Yours faithfully,

IVORY & SIME, *Secretaries.*

JSB/H.

P. S.—We shall be obliged if you will draw a cheque monthly to cover the amount of your salary for that period.

I. & S.

Exhibit 14

BRITISH ASSETS TRUST, LIMITED

Certified copy resolution passed at Meeting of the Directors on 2nd December 1936, regarding opening of Office in New York.

It was agreed to open an office in New York, and in connection therewith it was resolved as follows:

1. to appoint Mr. Walter A. Cooper, of Messrs Barrow, Wade, Guthrie & Co., 120 Broadway, New York, Assistant Secretary of the Company;

2. to instruct the Assistant Secretary to establish and take charge of an office of the Company at 120 Broadway, New York City, U. S. A.;

3. that the Assistant Secretary's salary be \$5,000 per annum, such remuneration to include the cost of clerical assistance, office rent, etc.;

4. that for the period up to the end of December 1936 the Assistant Secretary's salary be \$1,000 instead of at the rate of \$5,000 per annum.

With regard to the Company's Banking arrangements, it was resolved—

1. to authorise the Assistant Secretary to endorse for lodgment in the Company's Bank Account with Messrs. J. P. Morgan & Co., or The National City Bank of New York, cheques payable to the Company;

2. to authorise Messrs. J. P. Morgan & Co. to honour drafts on the Company's Account signed by any one Director and the Assistant Secretary;

3. to authorise Messrs. J. P. Morgan & Co., to honour drafts on the Company's Account signed by the Assistant Secretary, pro-

vided the total amount of such drafts in any one calendar month shall not exceed \$5,000.

The above certified as a true excerpt

A. W. ROBERTSON DURHAM,

Chairman.

Exhibit 20

SECOND BRITISH ASSETS TRUST LTD.

9 CHARLOTTE SQUARE,

Edinburgh, 2. 2nd December 1936.

WALTER A. COOPER, Esq.,

(Messrs. BARTOW, Wade, Guthrie & Co.),

120 Broadway, New York.

DEAR SIR: We enclose certified copy of Resolution passed at a Board Meeting of this Company held this date, appointing you Assistant Secretary of this Company to take charge of our New York Office and defining your authority to operate on the Company's Bank Account with The National City Bank of New York.

Your duties will in general consist of looking after the interests of this Company in the United States. As matters of regular routine you will be expected to attend to:

(1) the collection and lodgment in the Company's Bank Account of interest, dividends/etc. receivable by the Company;

60 (2) the payment of all local expenses, etc.;

(3) the keeping of records of all transactions in the United States (to enable this to be done we will arrange with our American Brokers, Bankers/etc. to forward to you particulars of all transactions with this Company);

(4) reporting periodically (usually once a week) by cable and/or letter on economic, political, or other developments in the United States;

(5) completing and filing Federal Income Tax and Capital Stock Tax Returns.

You will be expected on instructions from this office

(1) to represent the Company at Stockholders' and other Meetings;

(2) to obtain and forward statistical and other information, Company Reports, etc.

At the moment it is, as you will understand, difficult to fix a definite salary to be paid to you, but we suggest that to begin with until 30 June 1937 your salary should be at the rate of \$1,900 per annum. By the end of that time, we shall both have had some experience of the amount of work involved, and we should then be able to come to an agreement as regards an annual rate of remunerations. The salary will cover clerical assistance in addition to your own remuneration. Office rent and out-of-pocket expenses incurred in respect to stationery, postages, cables, travelling etc., will be chargeable to this Company.

For your services etc. during the period from now until the end of this year, we suggest that you should receive \$500, but this figure would also be subject to revision.

Yours faithfully,

IVORY & SIME, Secretaries.

JSB/H.

P. S.—We shall be obliged if you will draw a cheque monthly to cover the amount of your salary for that period.

I. & S.

Exhibit 21

SECOND BRITISH ASSETS TRUST LIMITED

Certified copy resolution passed at Meeting of the Directors on 2nd December 1936, regarding opening of Office in New York.

It was agreed to open an Office in New York, and in connection therewith it was resolved as follows:

61. 1. to appoint Mr. Walter A. Cooper, of Messrs. Barrow, Wade, Guthrie & Co., 120 Broadway, New York, Assistant Secretary of the Company.

2. to instruct the Assistant Secretary to establish and take charge of an office of the Company at 120 Broadway, New York City, U. S. A.;

3. that the Assistant Secretary's salary be \$2,500 per annum, such remuneration to include the cost of clerical assistance, office, rent etc.;

that for the period up to the end of December 1936 the Assistant Secretary's salary be \$500 instead of at the rate of \$2,500 per annum;

With regard to the Company's Banking arrangements, it was resolved—

1. to authorise the Assistant Secretary to endorse for lodgment in the Company's Bank Account with The National City Bank of New York, cheques payable to the Company;

2. to authorise The National City Bank of New York to honour drafts on the Company's Account signed by any one Director and the Assistant Secretary;

3. to authorise The National City Bank of New York to honour drafts on the Company's Account signed by the Assistant Secretary, provided the total amount of such drafts in any one calendar month shall not exceed \$5,000.

The above certified as a true excerpt.

A. W. ROBERTSON DUEHAM,
Chairman.

COMMISSIONER'S EXHIBITS

Exhibit C

[Copy]

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

American Office: 120 Broadway, New York City, N. Y. 123
George Street, Edinburgh, 2. Cable Address: "Faithful, Edinburgh."

22ND JANUARY 1937.

W. A. COOPER, Esq.,

Assistant Secretary,

*The Scottish American Investment Co., Ltd.,
120 Broadway, New York.*

DEAR SIR, I thank you for your letter of 12th instant. I note from the copy of your letter to Messrs. J. P. Morgan & Co., dated January 12, 1937, that you are taking up with Morgans the position of our holding of 655 shares Mainland Co. which they were under the impression, were worthless.

I note what you say regarding the obtaining of a ruling on the status of the office. I agree with you that a definite request to the Treasury for a ruling as to our status might be regarded as an indication that we are doubtful regarding our status. If the Treasury is prepared to release withholding agents from their requirements to withhold tax on any dividends paid to this company since January 1, 1936, merely on the basis of a statement from your office to the effect that the company is a resident foreign corporation, then there is really nothing to be gained by obtaining a ruling now, and I agree with you that perhaps the best way is for you to lodge our Income Tax Return on the basis

of a resident foreign corporation so that the matter will be dealt with in the normal way by the Treasury. In order to enable you to complete and file our Tax Return, I shall forward you the details which you requested as soon as I have them available.

I note what you say regarding your proposed accounting system, and I thank you for forwarding draft ruling for the cash receipts and disbursements statements. Your proposals seem satisfactory from our point of view, and the cash statements which you propose forwarding will fit in very nicely with our system here.

On December 23 last you wrote to us regarding the transfer to J. P. Morgan & Co.'s Nominee of shares held in the names of Directors. We have now considered this question and it has been decided to transfer the following securities to Morgan's Nominee:

Shares

- 1,000 Colorado & Southern 1st Pref.
- 500 Colorado & Southern 2nd Pref.
- 1,500 Kansas City Southern Pref.
- 2,500 Southern Pacific
- 500 Central States Elec. Pref.
- 805 Assoc. Dry Goods 1st Pref.
- 400 Assoc. Dry Goods 2nd Pref.
- 2,000 Great Northern Iron-Ore Properties.

I have today written to Messrs J. P. Morgan & Co. asking them to attend to the transfer of these Stocks. Perhaps you might have a word with them regarding the possibility of reducing the cost in taxes involved in the transfers.

Yours faithfully,

(Signed) J. R. McLAREN,

Secretary.

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Exhibit D

THE SCOTTISH-AMERICAN INVESTMENT COMPANY, LIMITED

American Office: 120 Broadway, New York City, N. Y. 123 George Street, Edinburgh 2. Cable Address: "Faithful, Edinburgh."

11TH FEBRUARY 1937.

W. A. COOPER, Esq.

Assistant Secretary.

*The Scottish American Investment Co., Ltd.,
120 Broadway, New York.*

DEAR SIR, We have today received from Morgans a copy of our General Account dated January 30, 1937 and a copy of our Collec-

tion Account of the same date. These appear to be in order except that there is a balance of \$5,459.88 at the credit of the Collection Account. Before we opened our New York office, and had the dividends paid to you there, our Collection Account was really in effect a statement of all income received by Morgans on our behalf, each dividend being credited to the Collection Account, and the total, after deduction of the $\frac{1}{4}\%$ commission, we immediately credited to the General Account, and the Collection Account did not at any time show any balance. Now Morgans are using the Collection Account to record the receipt of dividends by them where the mandates have not yet come into operation, and the corresponding payments to you. By this system the Collection Account therefore consists merely of cross entries and this method seems to be quite satisfactory.

Morgans however, as you are no doubt aware, collect all coupons on various Bonds direct, the amounts of these not being passed through your office. The Collection Account for January has been credited with the proceeds of coupons cashed, totalling \$5,459.00; an odd amount of 88 cents has also been credited to the Collection Account in respect of an adjustment to the dividend on our Revere Copper & Brass \$7 Preferred Stock. The balance of \$5,459.88 should of course be transferred to the credit of our General Account, and we shall be obliged if you will take up this matter with Morgans, and arrange that any items credited to our Collection Account and not paid over to you should always be automatically transferred to the General Account.

Yours faithfully,

(Signed) J. R. McLAREN,
Secretary.

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Exhibit E

[Copy]

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

MARCH 9, 1937.

Via "Queen Mary."

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
123 George Street, Edinburgh, 2, Scotland.

DEAR SIR: Receipt is acknowledged of your letter dated 23rd February and your three letters dated 26th February 1937.

With respect to the collections of the 20th and 21st January, aggregating \$3,050.00 referred to in your letter of 23rd February, you will find the details reported with my letter of the 22nd January covering the collections from the period of the 20th to

the 22nd of January. The \$750.00 represents dividend on 500 shares Northern States Power Company 6% preferred stock and the item of \$2 300.00 represents dividend collected on 2,000 shares of capital stock of H. L. Greene Company, Inc.

New Deposit Slips.—This weekly report inaugurates the use of the new deposit slip forms which we have finally obtained from your bankers. By using this form we will be able to enter on the deposit slip, a copy of which will be sent to you, all the necessary data explaining the nature of the deposit so that it will be unnecessary to send you with each report a separate typewritten list of the income collected.

Cash Sheets.—I have also had the cash sheets completed starting with the date of organization of this office and enclose the duplicate copies herewith. You will observe that these are closed as of the 31st of each month.

In connection with the statement of receipts for the month of December, you will observe a slight difference in the amount of tax deductions and commission deductions from security sales from the amounts reported in the typed statements previously sent you. This difference results from the fact that the deductions from proceeds made in connection with the requirements of the Securities Exchange Commission have been reflected in the statements herewith enclosed as commissions, whereas they were previously included with the tax deductions.

Cost of Securities for Tax Purposes

In connection with our work compiling a statement of the cost of American securities upon which we are now engaged, we find that the record of securities held by J. P. Morgan & Co. as of December 31, 1936 does not agree in several respects with the list of securities owned as of November 30, sent to this office by you. Some of these differences are accounted for by transactions between the two dates, but after proper reconciliation is made, for those items, we still face a number of differences. These are all set forth in detail in the attached statement headed "Differences between security lists of head office and J. P. Morgan & Co." You will observe that these differences are of three types:

1. Securities held by J. P. Morgan & Co. but not on your list.
2. Securities on your list but not on the list of J. P. Morgan & Co.
3. Securities appearing on both lists but not in the same amount on both lists.

Naturally we must prepare a correct and complete statement before we can make up the necessary statement and open the accounts. You have already been advised of the basis contemplated for keeping the record in our accounts of securities both

U. S. and foreign, and have concurred in my suggestions regarding same. With respect to these differences, therefore, to the extent that you are holding American securities abroad, your advices will explain the reason for the discrepancy and we will record in our account not only the shares held by Morgan, but also those held abroad. In the case of foreign securities, we will record them if they are held by Morgan & Co., and in that connection you should supply us with a statement of the cost thereof. You will observe that your list contains a number of foreign securities not on the Morgan list. If these represent foreign securities held abroad, we will pay no attention to them and not reflect them in our records until such time as they are sent to this country, if that ever happens.

With respect to securities on the Morgan list but not on your list, we have excluded those shares which you have previously advised me were not your property, but were held by Morgan & Co. and by you, in turn, for the account of others.

As soon as these discrepancies are cleared up, we will complete our statements.

66 Information From Messrs. J. P. Morgan & Co. re Securities.

Since we wrote Messrs. J. P. Morgan & Co. under date of February 25, requesting them to send all notices, etc., to us, we have conferred with them on the subject. The dividend mandates they filed directed the paying companies to send us the dividend checks. Most companies, however, require specific mandates to send us annual reports, proxies, notices, etc. in addition to the dividend checks.

Messrs. J. P. Morgan & Co. recognize the desirability of our receiving all these items, but feel they should have your specific instructions to that effect. Will you therefore please write Messrs. J. P. Morgan & Co. instructing them to either send to me all proxies, notices of meetings, annual reports or other communications received by them in respect to securities held for our account, or direct the corporations in which you hold shares to send the same directly to this office. On receipt of such instructions, Messrs. J. P. Morgan & Co. will see to it that we receive all these items.

With respect to execution of proxies, Messrs. J. P. Morgan & Co. would also like to have your specific authority to accept orders from me to have their nominee execute proxies.

Sale or Exercise of Rights and Sale of Odd Shares of Stock

Messrs. J. P. Morgan & Co. also feel that they should have your specific authority to accept and follow my instructions when

issued with respect to the sale or subscription of rights, sale or delivery of odd shares, etc.

While in most cases you will issue your instructions in respect to these matters direct to Messrs. J. P. Morgan & Co., there may be infrequent occasions when because of the shortness of time, or for other reasons, it will be necessary for instructions to be issued by this office. You will understand, of course, that I will do so only at your direction.

Will you therefore please authorize Messrs. J. P. Morgan & Co. to accept my instructions in this respect.

Westinghouse Air Brake Company Common Shares—Special Dividend

I have written to the above company requesting details of the special distribution, as per copy attached.

67 Report to Selected Industries Incorporated

On your advice, with respect to the changed address of the above company, we have readdressed the last annual report and Chairman's speech, to 15 Exchange Place, Jersey City, N. J.

Briggs Manufacturing Company

Attached hereto is a copy of the letter from the Briggs Manufacturing Company dated 10th February with which that company transmitted to us the check for the \$2,000.00 dividend due December 21. I might add, in addition to what is stated in that letter, that the Detroit Trust Company returned the dividend order after it had been filed by Messrs. J. P. Morgan & Co. with the request that it be guaranteed. I arranged with Morgans for that guarantee and the Detroit Trust Company acknowledged receipt of the mandate in satisfactory form on the 6th of January. Apparently, however, they had in the meantime returned the \$2,000.00 check to the Briggs Manufacturing Company and neglected to immediately forward the proper mandate to the company, so that the latter did not send us the dividend check until the 10th February.

Owen's Illinois Glass Company

This will acknowledge receipt of your cable regarding stock in the above company as follows:

"Have instructed Morgan ship London eight hundred Owens Illinois Glass please arrange ship lowest cost shares."

I issued the necessary instructions to Messrs. J. P. Morgan & Co. as you will observe from the copy of my letter annexed hereto with our other correspondence.

Faithfully yours,

Assistant Secretary.

Encs.

WAC: GP.

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Exhibit G

SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

120 Broadway, New York, N. Y.

CORPORATION INCOME TAX RETURN FOR CALENDAR YEAR 1934

LOSSES, YEAR 1934—SCHEDULE B

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost or March 1, 1913 value	Loss
National Distillers Common	2,000	1934	\$51,962.50	\$54,839.48	\$2,876.98
Gamewell Common	500	1929	6,531.25	34,587.50	28,056.25
Pacific Coast 1st Pfd	1,000	1902-05		105,500.00	
Pacific Coast 1st Pfd	500	1927-28	18,390.00	24,613.75	111,723.75
Pacific Coast 2d Pfd	1,000	1902-03	8,150.00	75,000.00	66,850.00
United Stores Common	850	1929	11,855.25	21,675.99	96,524.71
United Stores "A"	1,700	1929		86,763.97	
Cuba R. R. 36. Pfd	500	1911	10,993.00	44,315.00	80,572.00
Cuba R. R. 36. Pfd	500	1928	3,438.00	3,474.00	36.00
Remington Rand Prior Pfd	144	1927	12,298.40	15,869.00	3,600.60
Oklahoma Natural Gas Common	1,154-144/1000	1933	7,830.00	10,168.92	2,338.92
Life Savers	300	1923	4,069.37	9,727.52	5,718.15
U. S. Leather Part. Pfd. Class "A"	375	1928	40,400.00	155,869.00	115,469.00
Gold Dust Common	3,000				
			175,827.77	689,594.13	513,766.36

PROFIT FROM SALE OF STOCKS AND BONDS—SCHEDULE B

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost or March 1, 1913 value	Profit
American Dist. Telegraph 7% Pfd	780	1925	\$90,285.00	\$81,596.00	\$8,689.00
Remington Rand Pfd	300	1935	7,162.50	5,745.66	1,416.84
American Brake Shoe 7% Pfd	330	1934	42,185.00	39,345.00	2,840.00
Hercules Powder Pfd	690	1922	89,687.50	82,823.73	6,863.77
Atchafalpa, Toiyoka & Santa Fe	600	1933-34	60,637.50	41,657.50	18,980.00
Kelsey Hayes Wheel "A"	1,000	1935	24,787.50	22,707.50	2,080.00
Safeway Stores 6% Pfd	250	1934	27,437.50	21,800.00	3,637.50
Allied Stores Common	3,000	1934	25,275.00	21,375.00	2,900.00
Remington Rand Debs	50,000	1936	54,297.50	52,000.00	2,297.50
Reynolds Metals 5 1/4% Pfd	500	1935	55,075.00	56,290.00	4,875.00
Otis Elevator Pfd	500	1933	66,540.00	52,115.00	14,425.00
Public Service of New Jersey 5% Pfd	500	1933	53,375.00	40,225.00	15,150.00
Do	500	1933	53,425.00	42,287.50	11,137.50
Montgomery Ward "A"	1,000	1934	144,987.50	109,830.00	35,157.50
American Chain Pfd	600	1935	74,850.00	55,920.00	18,930.00
U. S. Smelting, Refining & Mining PM	1,000	1922	73,825.00	48,472.00	25,353.00
Maytag 3% Pfd	830	1928	89,745.50	76,722.25	13,323.25
Virginia Elec. Pfd	500	1935	56,412.25	45,500.00	11,412.25
Do	500	1935	56,375.00	51,750.00	4,625.00

CORPORATION INCOME TAX RETURN FOR CALENDAR YEAR 1936—CONT.
PROFIT FROM SALE OF STOCKS AND BONDS—SCHEDULE B—Continued

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost or March 1, 1913 value	Profit
69 Firestone Tire & Rubber \$6. Pfd	500	1935	\$52,375.00	\$44,965.00	\$7,410.00
Pacific Lighting \$6. Pfd	1,000	1933	105,312.50	90,375.00	14,937.50
New York, Chicago & St. Louis 4 1/2s	50,000	1935	46,062.50	34,562.50	11,500.00
Shell Union Pfd	1,000	1929	121,850.00	100,825.00	21,025.00
St. Louis County Water \$6. Pfd	550	1935	53,875.00	47,500.00	6,375.00
Mississippi River	500	1932	57,375.00	43,000.00	14,375.00
American Tobacco "B"	500	1933	50,625.00	46,100.00	4,525.00
Bethlehem Steel \$5. Pfd	2,000		37,700.00	28,183.13	9,516.87
Paramount Pictures 1st Pfd	500	1935	41,975.00	38,387.50	3,587.50
Remington Rand Common	6-4/100		135.75		135.75
Do.	600		11,767.70	5,347.03	6,420.67
International Printing Ink 6% Pfd	1,000	1935	109,975.00	107,250.00	2,725.00
Great Western Sugar 7% Pfd	100	1928	14,737.50	11,725.00	3,012.50
Ujiyawa Elec. Power Bonds	50,000	1925	48,878.75	45,000.00	3,878.75
Swift & Co. Common	1,000	1934	22,875.00	18,125.00	4,750.00
American Smelting & Refining 7% Pfd	1,000	1934-35	144,600.00	124,325.00	20,275.00
American Sugar Refining 7% Pfd	300	1928	42,225.00	32,355.00	9,870.00
Peninsular Telephone Pfd	4,050	1923-30	116,487.50	105,783.00	10,704.50
Pacific Gas & Elec. 6% 1st Pfd	2,000	1933	64,025.00	48,750.00	15,275.00
American Bakeries Notes 5%	7,175	1935	5,740.00	5,022.50	717.50
Radio Corp. 3 1/2% 1st Pfd	800	1936	59,060.00	47,010.00	12,050.00
Radio Corp. 3 1/2% 1st Common	1,500	1936	18,575.00	14,260.91	4,314.09
U. S. Smelting Pfd. \$3 1/4	400	1922	28,930.00	19,593.20	9,336.80
U. S. Leather 7% Prior	250		23,700.00	22,147.48	1,552.52
U. S. Smelting, Refining & Mining 7% Pfd	600	1936	43,394.11	29,100.00	14,294.11
Owens Illinois Glass	350		52,705.13	19,955.75	32,749.38
Minneapolis Hosiery & Knit Common	1,000 rts		121.25		121.25
New York Steam Pfd	110 shs		31,282.50	11,300.00	20,000.00
Melville's Shoe Corporation	1,500 rts		551.40		551.40
Great Northern R. R.	9,000 rts		10,950.00		10,950.00
Remington Rand	600 rts		70.92		70.92
Phillips Petroleum	2,500 rts		1,643.75		1,643.75
National Dairy Products	1,500 rts		7.50		7.50
Bethlehem Steel Corp.—Gain on exchange			2,000.00		2,000.00
			2,571,453.31	2,104,511.69	466,941.62

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED.
120 Broadway, New York, N. Y.

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR CALENDAR YEAR 1937
GAINS AND LOSSES ON SALES AND EXCHANGES OF STOCKS AND BONDS—SCHEDULE E

Par of bonds or number of shares	Description	Date acquired	Date of sale or exchange	Gross sales price	Cost	Gain	Loss
\$50,000	U. S. of Brazil—5% funding due 10/1/31	Dec. 1934	May 4-25, 1937	\$40,425.00	\$35,125.00	\$5,300.00	
\$33.24	Province of Buenos Aires—5% arrears etc. from 6% bonds due 3/1/31		Mar. 30, 1937	29.81		29.81	
\$9.00	Province of Buenos Aires—5% arrears etc. from 7% bonds due 4/1/32		Mar. 30, 1937	5.04		5.04	
\$38,000	Province of Cordoba—Ext. 7% due 7/1/42	May & July 1925	May 13-24, 1937	27,000.00	35,752.50		
\$180,000	Imperial Japanese Gov't. Ext. S/F 5½% due 5/1/65	Mar., July, Aug. 1934	Oct. 15-29, 1937	102,704.62	141,405.25	1,247.50	\$38,700.63
\$32,000	Oriental Development Co. Ltd. Ext. deb. 5½% due 1948	Mar. & Apr. 1935	Dec. 2-21, 1937	19,061.25	25,070.00		6,008.75
\$30,000	Oriental Development Co. Ltd. Ext. deb. 6% due 1953	Mar. 1935	Oct. 15, 1937	15,787.50	24,037.50		8,250.00
\$23,000	Oriental Development Co. Ltd. Ext. deb. 6% due 1953	Oct. 31, 1937	Nov. 15-18, 1937	11,901.25	23,433.13		11,531.88
\$50,000	Republic of Uruguay—Ext. S/F 6% due 5/1/64	May 1930	Nov. 5, 1937	25,600.00	45,000.00		22,500.00
1,000 sts.	Alfa-Chalmers Manufacturing Co.—com	Sept. 1937	Sept. 26, 1937	31.25	31.25	31.25	
2,000 sts.	American Rolling Mill Company—com	Sept. 1935	Feb. 18-24, 1937	74,300.00	51,800.00	22,500.00	
600 sts.	American Sugar Refining Co.—pfd	Apr. 1928	Jan. 4-15, 1937	55,450.00	64,719.00	20,740.00	
500 sts.	Anchor Cap Corp.—common	Mar. 1930	Feb. 17, 1937	10,887.50	23,512.50		11,625.00
200 sts.	Anchor Cap Corp.—\$5.50 com w. pfd	Nov. 1928	Feb. 17, 1937	37,000.00	72,360.00		35,360.00
1,000 sts.	Armour & Co. of Delaware—7% pfd	Dec. 1934	Feb. 17, 1937	102,200.00	102,200.00		
165 sts.	Barker Bros. Corp.—5½% pfd	Feb. 1936	Feb. 17, 1937	100,433.84	102,305.51	7,935.50	
500 sts.	Bethlehem Steel Corp.—common	Feb. 1936	Feb. 17, 1937	14,400.00	10,708.83	3,691.17	
2,000 sts.	Bethlehem Steel Corp.—\$4.37 1/2 com	Feb. 1936	Oct. 1, 1937	3.00		3.00	
71	Brocklyn-Madison Trust Corp.—pfd	May 1936	Aug. 25, 1937	28,174.46	61,725.00		33,550.54
1,500 sts.	California Packing Corp.—pfd	May 1936	Apr. 2, 1937	1,265.63	1,262.50	3.13	
25 sts.	California Packing Corp.—6% cum. pfd	Feb. 20, 1937	Apr. 2, 1937	44,210.00	40,453.34	3,756.66	
400 sts.	Champion Paper & Fibre Co.—6% cum. pfd	Sept. 1935	Feb.-Sept. 1937	1,917.50	2,065.00		147.50
20 sts.	Chesapeake & Ohio Railway Co.—pfd "A"	Jan. 11, 1937	Feb. 1, 1937	3,150.00	78,712.50		75,562.50
600 sts.	Chicago & North Western Railway Co.—com	Aug. 28, Dec. 29	July 2, 1937	38,250.00	30,127.20	8,122.80	
1,500 sts.	Chicago Pneumatic Tool Co.—common no p.	July 14, 1937	July 14, 1937	19,850.00	20,160.00		290.00
200 sts.	Consolidated Edison Co. of N. Y.—\$5 pfd	Oct. 7, 1937	Oct. 1937	30,600.00	30,600.00		
600 sts.	General Telephone Corp.—\$3 pfd	Sept. 1935	Mar. 5 & 8, 1937		8,850.00	8,750.00	

GAINS AND LOSSES ON SALES AND EXCHANGES OF STOCKS AND BONDS—SCHEDULE E—Continued

Par of bonds or number of shares		Date acquired	Date of sale or exchange	Gross sales price	Cost	Gain	Loss
2,000 lbs	Gilchrist Company—common	Oct. 1937	Oct. 7, 1937	\$125.00	0	\$125.00	
300 shs	Great Western Sugar Co.—7% pfd	Apr. & Oct. 1928	Mar. & Nov. 1937	75,625.00	\$84,172.50	11,452.50	
150 shs	Grand Central Corp.—5 1/2% pfd	Dec. 29, 1936	Apr. 2, 1937	1,681.25	4,725.00	4,725.00	
2,800 shs	Mine Walker Opperham & W. O. Ltd. cum. pref.	1933 & 1935	Mar.-Sept. 1937	55,300.00	47,963.50	7,337.50	\$43.75
1,000 rts	Inland Steel Company	May 1937	May 28, 1937	656.25	0	656.25	
350 shs	Lehigh Valley Power Co.—\$5 pfd	Dec. 1934	Jan. 22 & Mar. 5, 1937	51,195.00	43,537.50	7,657.50	
6 rts	Montgomery Ward & Co.	Feb. 11, 1937	Feb. 17, 1937	500.00	440.52	7.48	
1,000 rts	New York Central Railroad Co.	Dec. 22, 1934	Jan. 22, 1937	13.88	14.70		
200 shs	New York Steam Corp.—\$7 pfd "A"	Mar. 1937	Apr. 16, 1937	468.75	0	468.75	
200 shs	New York Steam Corp.—\$7 pfd "A"	July & Sept. 1933	Feb. & Apr. 1937	21,850.00	20,693.12	1,156.88	
500 shs	North American Edison Co.—\$6 pfd	June & July 1933	Oct. 7, 1937	30,533.33	37,443.75	12,000.25	
500 shs	Otis Steel Company—common	June 14, 1936	Oct. 7, 1937	49,450.00	5,977.00	4,384.00	
600 shs	Owens Illinois Glass Company—common	Dec. 14, 1936	Feb. 17, 1937	42,225.90	19,830.00	22,395.90	
1,000 shs	Racine Corporation of America—\$5.00 cum. conv. 1st pfd	May 18, 1937	Nov. 3, 1937	78,175.00	58,803.06	19,371.94	
500 shs	Remington Rand, Inc.—\$4.50 cum. pfd w. w. d.	1933-1938	Jan. 19, 20, 1937	45,000.00	31,895.37	13,104.73	
4 rts	Texas Corporation—common	Feb. 15, 1937	Mar. 16, 1937	11.75	0	11.75	
925 shs	Tung-Sol Lamp Works, Inc.—common	Aug. 1935	Mar. 9, 1937	9,243.75	6,544.38	2,699.37	
175 shs	Western Dairies, Inc.—pfd	1928 & 1929	Mar. 9, 1937	6,518.75	13,572.30		
500 shs	West Virginia Pulp & Paper Co. Inc. pfd	Dec. 1934	Feb. 8, Mar. 1937	33,025.00	42,500.00	10,475.00	
1,000 shs	Selected Industries, Inc.—\$5.00 prior stk. 2nd	1935	May 1937	60,695.50	73,825.00	20,870.50	
Total				1,363,297.36	1,360,822.21	2,475.15	214,360.72
Net gain							

Exhibit K

BRITISH ASSETS TRUST, LIMITED

120 Broadway, New York, N. Y.

FEDERAL CORPORATION INCOME TAX RETURN FOR CALENDAR YEAR 1936

PROFIT FROM SALE OF STOCKS AND BONDS—SCHEDULE B

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost or Mar. 1, 1913 value	Profit
Consolidated Oil Corp. 8% Pfd	1,500	1931	\$105,000.00	\$154,350.00	\$16,850.00
Peninsular Telephone Co. 7%	122	1925	13,424.00	12,444.00	976.00
Maytag Co. \$3 Pfd	2,000	1929	95,275.00	95,137.00	17,438.00
First National Stores Common	525	1925	24,140.00	22,092.00	2,078.00
Kalamazoo Stove Co. Common	28½	1936	1,146.30	570.00	576.30
United Aircraft & Transport Corp. Common Stock purchase warrants	125	1929	2,043.75	125.00	1,918.75
Beatrice Creamery Co. 7% Pfd	1,000	1930	110,000.00	105,725.00	4,275.00
Tri Continental Corp. \$1 Pfd	800	1930	88,000.00	71,690.00	16,310.00
Shell Union Oil Corp. 5% Pfd	2,000	1929-31	249,550.00	168,775.00	80,775.00
General American Transport Co.	2,500 Pfd	1931	748,575.05	613,878.00	134,697.05
National Dairy Products Corp.	2,900	1936	1,795.93	290.00	1,505.93
			290.00		290.00
			750,665.98	613,878.00	136,785.98

LOSS FROM SALE OF STOCKS AND BONDS—SCHEDULE B

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost or Mar. 1, 1913 value	Loss
Republic Steel Corp. Common	2,000	1930	\$38,718.40	\$42,475.50	\$3,755.26
Life Saver Common	100	1927-29	4,306.70	8,500.00	4,193.30
Bristol Myers Co.	330	1927-29	13,630.72	34,892.00	21,261.28
United Drug Co.	640	1927-29	7,761.16	33,786.00	26,024.84
United Aircraft Corp. Common	120	1929	2,852.18		
United Airlines Transport Common	30	1929	792.47	11,550.00	10,757.53
Boeing Airplanes Co.	25	1929	590.25		
Vick Chemical Co.	320	1927	14,414.50	28,450.00	14,044.50
Hershey Chocolate Corp. Common	1,300	1930-31	93,422.50	119,738.00	26,315.50
Texas Gulf Sulphur Common	2,000	1930	69,546.50	118,089.00	48,542.50
Commercial Solvents Common	3,000	1931	46,425.00	61,275.00	14,850.00
Gillette Safety Razor Co. Common	600	1928-29	8,925.00	63,245.00	54,320.00
Lehn & Fink Products Common	1,000	1925	16,062.50	44,365.00	28,302.50
Pacific Coast 1st Pfd	300	1924	3,240.00	15,583.00	12,343.00
Canada Dry Ginger Ale Common	4,000	1931	54,954.00	152,675.00	97,721.00
			375,701.88	714,910.56	338,508.68

BRITISH ASSETS TRUST, LTD.

120 Broadway, Room 2620, New York, N. Y.

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR
CALENDAR YEAR 1937

PROFIT FROM SALE OF STOCKS AND BONDS, SCHEDULE E

Description	Number of shares or pair of bonds	Date acquired	Amount realized	Cost or other basis	Profit
Allied Stores Corp. 4½% Debentures	\$1,000.00	1935	\$1,007.50	\$933.12	\$74.38
American Bakeries Corp.—Dividend Note on participating 5½% Stock	\$12,812.50	1935	11,787.90	8,968.75	2,818.75
Allis Chalmers Mfg. Co.—Common rights	1,000	1937	250.00		250.00
American Smelting & Refining Co.—Common rights	1,000	1935	5,355.00		5,375.00
Bethlehem Steel Corp. (Del.)—Common rights	1,000	1937	5.86	0	5.86
Edward G. Budd Mfg. Co.—Common stock	4,000	1936	53,325.00	49,055.70	4,269.30
Continental Illinois Nat'l Bank of Chicago—Common stock	34	1936	58.79	46.50	12.29
General Motors Corp.—Common stock	1,000	1931-35	54,201.90	42,368.75	16,833.15
Hendallie Hershey Corp.—Class "B" Stock	1,000	1935	25,187.50	17,300.00	7,887.50
International Paper & Power Co.—5½% Pfd. Stock	1,000	1937	86,450.00	81,602.33	1,847.67
Common Stock	1,000	1937	31,462.50	27,790.17	3,702.33
Natl Supply Co. of Del.—7½% Pfd. Stock	100	1931	12,475.00	11,069.09	1,475.00
Natl Supply Co. of Del.—7½% Pfd. Stock	100	1931	49,912.50	44,000.00	5,912.50
Phelps Dodge Corp.—Common	1,000	1936	56,650.00	52,965.00	3,685.00
Remington Rand, Inc.—Common rights	1,000	1936	1,000.00		1,000.00
Westinghouse Electric & Mfg. Co.—Common Stock	1,000	1936	50,800.00	44,103.00	16,692.00
			454,949.05	383,108.32	71,840.73

LOSS FROM SALE OF STOCKS AND BONDS, SCHEDULE E

Description	Number of shares or pair of bonds	Date acquired	Amount realized	Cost or other basis	Loss
Great Consolidated Electric Power Co., Ltd. S. F. 7½% Bonds	\$49,500	1935-36	\$33,551.25	\$46,571.88	\$12,020.63
Shinetsu Electric Power Co., Ltd. 1st S. F. 6½% Bonds	\$50,000	1935	27,000.00	43,500.00	16,500.00
American Smelting & Refg. Co. 6½% Cum Pfd. Stock	2,000	1935	210,000.00	222,825.00	12,825.00
American Woolen Co.—Pfd. Stock	300	1934	19,500.00	23,505.00	4,005.00
American Woolen Co.—Pfd. Stock	200	1934	33,000.00	15,670.00	2,670.00
Chesapeake & Ohio Railway Co.—Common Stock	2,000	1930	76,325.00	102,514.10	26,189.10
Chrysler Corp.—Common Stock	1,500	1935-36	81,000.00	148,734.50	67,734.50
Mead Corp.—Common Stock	100	1931	5.00	12.50	7.50
			461,381.25	603,332.98	141,951.73

Exhibit O

SECOND BRITISH ASSETS TRUST, LTD.

120 Broadway, New York, N. Y.

CORPORATION INCOME TAX RETURN FOR CALENDAR YEAR 1936

PROFIT FROM SALE OF STOCKS AND BONDS—SCHEDULE B

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost	Profit
California Electric Generating Co. 6% Pfd.	150	1926	\$15,000.00	\$9,749.49	\$5,250.51
Life Savers Corp.	200	1927-30	5,470.00	7,916.00	551.00
United Drug, Inc.	800	do	9,925.00	7,996.00	1,958.10
Chesapeake & Ohio Rly. Co. Common	2500	1931-32	248,987.50	66,921.54	81,165.96
Vick Chemical Inc. Common	400	1930	17,827.50	36,452.57	1,374.93
Public Service Co. of Colorado 7% Pfd	6	1920	6,640.00		640.00
United Gas & Electric Corp. Pfd	119	1922	11,050.70	6,949.72	4,100.98
Glicklen Co. 7% Cum. Prior Pfd	500	1924	52,500.00	42,889.34	9,610.66
Youngtown Sheet & Tube Co. 5 1/2% Pfd	500	1935	57,575.00	49,445.00	8,130.00
American Telephone & Telegraph Co. Com.	500	1932	92,375.00	54,362.50	38,012.50
Curtis Publishing Co. Com. Pfd	500	1934	51,625.00	34,876.00	16,750.00
Province of Buenos Aires	8360		1.98	1.83	16
Province of Buenos Aires, 3, 1984	1,000		538.16	470.00	68.16
			462,615.83	294,989.88	167,615.95

LOSS FROM SALE OF STOCKS AND BONDS—SCHEDULE B

Description	Number of shares or par of bonds	Date acquired	Amount realized	Cost	Loss
Bristol Myers Co. Common	400	1927-30	\$17,225.50	\$2,405.62	\$4,178.12
Lambert Co.	1,500	1931	30,612.50	143,504.80	112,892.30
Atlas Plywood Corp. Common	2,000	1925	24,215.00	54,497.20	30,282.20
Colgate Palmolive Peet Co.	3,300	1932	43,425.00	123,818.65	79,893.65
Purity Baking Co. Common	1,000	1929	12,137.50	142,427.90	130,290.40
Pacific Mills Co. Common	200	1925	3,335.50	19,499.60	16,164.10
Pacific Coast 2nd Pfd	1,700	1936	8,379.02	88,517.09	80,138.07
International Rly. Co. 5% Bonds 1962	3,000		1,848.33		1,839.04
International Rly. Co. Shares	184	1933	358.80	4,037.17	75.44
Minneapolis Honeywell Regulator Co.	1,200 sts.	1936	149.56	225.00	600.00
National Dairy Products Corp.	4,000 sts.	1936	490.00	2,750.00	251.55
Great Northern Railway	1,000 sts.	1936	2,498.45		
			145,089.16	601,682.43	456,593.27

SECOND BRITISH ASSETS TRUST, LTD.

120 Broadway, Room 2630, New York, N. Y.

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN FOR CALENDAR
YEAR 1937

GAINS FROM SALES AND EXCHANGES OF STOCKS AND BONDS—SCHEDULE E

	Description	Date acquired	Amount realized	Cost	Gain
\$2,050	American Bakeries Corp.—Partic. 5%	10-8-35	\$1,886.09	\$1,435.00	\$451.00
	Dividend Note				
\$9,000	Great Consolidated Electric Power Co., Ltd. 1st Mtg. S. F. "A" 7's	5-21-25	8,212.60	8,063.85	148.75
750 shs	Tidewater Associated Oil Co. Cum. Conv. Pfd.—Cash received on exchange		1,500.00		1,500.00
5,000 rts	American Smelting & Refining Co. Common	1937	26,459.46		26,459.46
60 shs	Caterpillar Tractor Co. 5% Pfd	12-24-36	6,240.09	6,180.00	60.00
750 shs	Gulf States Steel Corp. Common	1936	44,043.05	39,231.13	4,812.62
500 rts	Remington Rand, Inc.	1936	250.00		250.00
2 rts	Texas Corporation—Capital	1937	3.99		3.99
			88,505.80	54,909.98	33,625.82

LOSSES FROM SALES AND EXCHANGES OF STOCKS AND BONDS—SCHEDULE E

	Description	Date	Amount realized	Cost	Loss
\$25,000	Imperial Japanese Gov't. Ext. Loan 1930 S. F. 5 1/2's	1934-35	\$13,760.90	\$20,305.33	\$6,634.43
1,500 shs	Otis Elevator Co. Common	1930	57,462.50	103,450.00	45,987.50
2,500 shs	Socoany Vacuum Oil Co.	2-5-36	41,250.00	41,450.60	200.60
83 shs	United Cigar Stores Common—Class "A" exchanged for United Cigar Whelan Stores Corp.	1928	19.12	2,116.50	2,106.38
			112,393.52	167,322.43	54,128.91

THE SCOTCH-AMERICAN INVESTMENT CO., LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

BRITISH ASSETS TRUST, LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

SECOND BRITISH ASSETS TRUST, LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 104249, 104250, 104251, 108440, 108441, 108442

Findings of fact and opinion

Promulgated August 6, 1942

Petitioners, which are foreign investment corporations with large holdings of United States securities, established an office in this country under the charge of a United States citizen designated an "Assistant Secretary" by each of the petitioners. The United States office maintained original records of all of petitioners' transactions in this country, collected dividends on petitioners' United States securities, and sent periodical reports to the home offices of petitioners. The United States office also investigated proposed reorganizations of corporations in which petitioners owned securities and made recommendations to petitioners with respect thereto. The assistant secretary of petitioners disposed of stock rights and script and designated the specific certificates of securities to be delivered in the case of sale of securities by petitioners. In addition this office prepared petitioners' United States tax returns and generally took care of petitioners' affairs in the United States. *Held*, that petitioners maintained an "office or place of business" within the United States and are resident foreign corporations taxable under section 231 (b) of the Revenue Acts of 1936 and 1938.

Marion N. Fisher, Esq., for the petitioners.

Harold D. Thomas, Esq., for the respondent.

The Commissioner determined deficiencies in income tax of the petitioners as follows:

	1936	1937	1938	1939
Scottish American Investment Co., Ltd.	\$63,031.57	\$113,921.68	\$97,740.85	\$69,054.56
British Assets Trust, Ltd.	42,555.98	84,743.68	54,710.09	50,137.81
Second British Assets Trust, Ltd.	20,637.22	37,962.61	28,365.47	25,304.2

Petitioners claim overpayments as follows:

	1936	1939
Scottish American Investment Co., Ltd.	\$38,933.01	
British Assets Trust, Ltd.	26,319.25	\$6,550.44
Second British Assets Trust, Ltd.	19,830.14	2,441.33

The sole question before the Board is whether or not petitioners are resident foreign corporations engaged in trade or business in the United States or having an office or place of business in the United States. The proceedings were consolidated for hearing and opinion.

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Findings of fact

Petitioners are corporations organized under the laws of Great Britain, with their principal offices in Edinburgh, Scotland. Each of the petitioners is an investment trust and is engaged in the business of investing the funds of its security holders for the primary purpose of deriving income from investment. Petitioners' returns for the taxable years 1936 and 1937 were filed with the collector of internal revenue for the district of Maryland; their returns for the years 1938 and 1939 were filed with the collector at Newark, New Jersey.

Each of petitioners has large sums invested in securities in the United States. On December 2, 1936, petitioners had the following amounts invested in United States securities:

Scottish American Investment Co., Ltd. (hereinafter referred to as Scottish)	\$24,452,752.79
British Assets Trust, Ltd. (hereinafter referred to, as British)	14,974,359.67
Second British Assets Trust, Ltd. (hereinafter referred to as Second British)	8,457,000.00

The investment of British in United States securities represented over 30 percent of its total investment. The investment of Second British in the United States was in excess of 40 percent of its total investment. The relative investment of Scottish in the United States was proportionately larger than that of the other two petitioners. During the taxable years each of petitioners owned a large number of different United States securities.

Each of petitioners had a board of directors, which met frequently at its home office in Edinburgh. British and Second British were managed, as is customary for investment trusts in England and Scotland, by a firm of secretaries engaged in the business of management.

For some years prior to 1936 Scottish had realized profits in the sales of securities in the United States and had failed to file Federal income tax returns reporting the profit thereon. British companies, such as petitioners, are forbidden to pay dividends out of capital gains or to show such gains in their profit and loss accounts. The accounting firm of Barrow, Wade, Guthrie & Co., of New York City, of which Walter A. Cooper, C. P. A., was a partner, was engaged by Scottish to make a check or audit of its sales of

securities and resulting profit over the period of years prior to 1936. As the result of this audit taxes for the years 1927 to 1934, inclusive, in excess of \$1,000,000, plus interest of \$220,000, were paid by Scottish.

In 1935 F. H. N. Walker, the manager of Scottish, was in the United States and discussed with Cooper the question of opening an office in the United States for Scottish.

During September and October 1936 Cooper, together with Earl Breeding, an employee of Barrow, Wade, Guthrie & Co., made a trip to England and Scotland, where they visited a number of their firm's clients. They discussed with officials of petitioners the whole problem of opening an office for petitioners in the United States, including the ways in which a United States office might assist petitioners in business transactions and the effect of such an action in view of the Revenue Act of 1936. Cooper and Breeding left England in November 1936 without any decision having been reached by petitioners as to whether or not they would open offices in the United States.

On December 2, 1936, each petitioner appointed Cooper its assistant secretary and, on the same day, cabled its decision to Cooper. British and Second British wrote letters to Cooper dated December 2, 1936, informing him of his appointment and instructing him to proceed with the opening of an office in the United States. Scottish wrote Cooper a letter dated December 3 similar to those which the other petitioners wrote him under date of December 2, 1936.

Immediately upon receipt of the cables Cooper rented office space, consisting of two rooms on the twenty-sixth floor of the Equitable Building, at 120 Broadway, New York, New York, in which the firm of Barrow, Wade, Guthrie & Co. maintained offices on the twenty-seventh floor. A lease was taken out for each petitioner and a designated part of the office was leased for each petitioner for a specified sum per year. This office had a telephone which was connected with the switchboard in the office of Barrow, Wade, Guthrie & Co. Petitioners' United States office was established in order to enable petitioners to keep in closer touch with their large United States investments, to do themselves what had formerly been done for them by others, and to gain certain tax advantages.

Both before and after the opening of the United States office the securities of petitioners were in the custody of J. P. Morgan & Co. and the National City Bank. The securities were registered in the names of nominees. Prior to December 2, 1936, the securities were registered in the names of the bank's regular nominees, each of whom received a single dividend check on

behalf of a number of stockholders. During December 1936 Cooper made arrangements with J. P. Morgan & Co. and the National City Bank to designate for each petitioner a new nominee in whose name were registered only securities of such petitioner. By the end of December 1936 the new nominees had filed dividend mandates with the corporations the securities of which were held by the petitioners, directing payment of dividends and the sending of annual reports, statements, and notices to petitioners at their United States office.

During December 1936, Cooper obtained assistance from Barrow, Wade, Guthrie & Co. in establishing proper accounts for petitioners and in determining the methods of handling the affairs of the petitioners in the United States. The services of several employees of Barrow, Wade, Guthrie & Co. were devoted to the installation of a bookkeeping system and making current records in December 1936. During December 1936 the records of each petitioner were maintained on temporary sheets, copies of which were transmitted to the main offices in Edinburgh. Later the temporary records were written up in final form. The records maintained by the United States office were the original records of petitioners' transactions, receipts, and disbursements in the United States. All receipts of cash and all disbursements during

December 1936 were currently entered in the temporary record. Beginning in December 1936, all expenses of each petitioner in the United States were paid by the United States office.

Throughout the taxable years Cooper rendered services as assistant secretary of petitioners. In addition to Cooper the services of two women were employed full time throughout the taxable years to render stenographic and clerical services. From February 1938 through the taxable year 1939 Henry A. Jeffers, an employee of Barrow, Wade, Guthrie & Co., supervised the activities of the office and spent a total of 1,038½ hours on the affairs of petitioners during that period.

Beginning December 1936, and continuing through 1939, the dividends on United States securities to which each petitioner was entitled were collected by the United States office.

During December 1936 some of the dividends were paid directly to J. P. Morgan & Co., and the National City Bank because the dividends, while payable in the latter part of December, were payable to stockholders as of a record date prior to filing of mandates by the new nominees. By the end of December most of the dividends were being paid directly to petitioners' United States office.

Petitioners received the following amounts in dividends from United States securities:

	1936	1937	1938	1939
Scottish	\$295,912.78	\$1,143,408.97	\$730,021.45	\$731,180.92
British	673,119.74	823,253.10	548,923.43	579,355.47
Second British	342,508.75	339,280.85	262,292.80	259,735.11

Interest on bonds owned by petitioners continued to be collected by the banks having custody of the securities.

Checks for dividends collected by petitioners' United States office were endorsed and deposited by the office in petitioners' bank accounts in the United States. After establishment of the office in the United States in December 1936, J. P. Morgan & Co. did not send notices, annual reports, or proxies to Scottish or British.

Cooper was authorized by each petitioner to look after its interests in the United States. Specifically, he was authorized by each petitioner, as a matter of regular routine, to attend to the following:

- (1) The collection of interest and dividends, and deposit of such income in the company's bank account.
- (2) The payment of all local expenses.
- (3) The maintenance of records of all United States transactions.
- (4) The making of periodical reports (usually once a week), by cable and/or letter on economic, political or other developments in the United States.
- (5) The completion and filing of Federal income tax and capital stock tax returns.

Cooper was specifically authorized by each petitioner to draw on its bank account or accounts in the United States in amounts up to \$5,000 in any one calendar month, and up to any amount upon the counter-signature of a director. The authority of the assistant secretary of each petitioner in the United States was as great as the authority of any director or officer at the main office.

While the office of petitioners was maintained at 120 Broadway, petitioners filed New York State franchise tax returns. Later, petitioners moved this office to New Jersey, where they qualified to do business under the laws of that state. The office of petitioners in New Jersey consisted of a large room with one corner of it partitioned off as a private office. There was an outside telephone in the office with a New Jersey number and a trunk line to the office of Barrow, Wade, Guthrie & Co.

Each petitioner maintained in its office in the United States a general ledger, a security ledger, a general journal, and a cash book. The general ledgers, security ledgers, and cash books were looseleaf, while the general journals were bound volumes. Each petitioner maintained in its United States office debit and credit vouchers in which all sales and purchases of securities and disbursements of every character were entered. The books and record kept for each petitioner in petitioners' United States office constituted full and adequate records of petitioners' security transactions, receipt of income, and all disbursements in the United States.

Copies of cash sheets and journal entries were furnished to the main office of each petitioner monthly by petitioners' United States office. An annual statement was sent to the main office of each petitioner at the end of December of each year by the United States office. Usually the United States office sent a statement of income and disbursements as of December 1 to Edinburgh and brought that statement up to date at the end of the year by cable so that petitioners might close out their accounts quickly as of the end of the year.

The United States office periodically sent to petitioners' home offices various reports concerning the United States investments, such as annual reports of corporations in which petitioners had invested, and general developments in the United States, including statistical data issued by the Federal Reserve Bank and the New York Times. The United States office investigated reorganization plans of corporations in which petitioners owned securities and made recommendations to petitioners as to what action should be taken by petitioners.

At Cooper's suggestion each of petitioners in June 1937 appointed Breeding as an additional assistant secretary. Breeding was so appointed because of the illness of Cooper, who was required to take a long vacation by his doctor. Breeding's appointment provided for no additional salary.

Petitioners' assistant secretary in the United States had authority to direct nominees to sign proxies and to direct the disposition of stock rights and scrip. He exercised the latter responsibility without consulting the main offices of petitioners. He had authority to authorize the delivery of specific certificates on sales of securities for each petitioner and exercised such authority without consulting the main offices.

The United States office prepared the United States tax returns of petitioners.

The expenses of the United States office of the petitioners were paid out of the amounts received by Cooper for his salary. Cooper's salary from Scottish was paid directly by that company by check or draft. With respect to British and Second British,

Cooper drew his own salary checks on the accounts of those petitioners at the banks. Incidental expenses, such as stationery, office supplies, light, and telephone, were paid by checks drawn by Cooper on petitioners' accounts. The rent for office space was at first paid out of Cooper's salary. Later, at Cooper's request, petitioners assumed the charges for rentals. The amount paid Cooper for salary was subject to adjustment from time to time, depending upon the amount of expenditures incurred in connection with his activities. Every partner of Barrow, Wade, Guthrie & Co. who earned outside income was required by the partnership to turn over such income to the firm. The New York office expenses for petitioners were as follows:

	1936	1937	1938	1939
Scottish	\$1,302.78	\$7,456.86	\$9,391.36	\$7,728.39
British	1,319.07	6,918.76	6,060.72	6,193.82
Second British	590.26	2,853.42	2,799.78	2,533.71

Cooper left the firm of Barrow, Wade, Guthrie & Co. on October 31, 1940. Shortly after that time he tendered his resignation as assistant secretary of petitioners, which was accepted by each of petitioners.

Opinion

ARUNDELL: The only question before us is whether, or not, petitioners are resident foreign corporations taxable under section 231 (b) of the Revenue Acts of 1936¹ and 1938.² Petitioners contend that they were engaged in business in the United States during the taxable years and had an office or place of business here. They maintain that for these reasons they were resident foreign corporations during the taxable years. Respondent argues that petitioners had no real office or place of business in the United States and transacted no business in this country. He argues that petitioners' "office" was engendered solely for tax purposes and had not the substance of a real office. A resident foreign corporation is defined in section 231 (b) as a foreign corporation engaged in trade or business within the

SECTION 231. TAX ON FOREIGN CORPORATIONS.

(b) **RESIDENT CORPORATIONS.**—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a); but the normal tax imposed by section 13 shall be at the rate of 22 per centum instead of at the rates provided in such section.

(c) **RESIDENT CORPORATIONS.**—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (c) (1).

United States or having an office or place of business here. In *Linen Thread Co., Ltd. v. Commissioner*, 128 Fed. (2d) 166, the Second Circuit Court of Appeals held that the terms "office" or "place of business" are not "mutually exclusive and though used in the statute in the disjunctive do not necessarily mean that an office may not be a place of business or the latter be but an office. Yet they apparently were not used synonymously * * *". The court further placed its stamp of approval on the Commissioner's regulations (art. 231-1 (b), Regulations 108 promulgated under the Revenue Act of 1938), which provide that:

"Whether a foreign corporation has an 'office or place of business' within the United States depends upon the facts in a particular case. The term 'office or place of business' however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected."

Other cases that throw light on the question presented are *Aktiebolaget Separator*, 45 B. T. A. 243; affirmed *per curiam*. — Fed. (2d) — (June 19, 1942), and the Board's opinion in *B. W. Jones Trust*, 46 B. T. A. 531.

88. With these fundamental concepts in mind, a brief résumé of the facts will be helpful in reaching the conclusion whether or not petitioners have been established within the United States an "office or place of business" within the meaning of the statute.

Petitioners are among the very largest of the foreign investment trusts with American holdings. Their investments were made primarily in conservative companies and they were interested in safety and an adequate return rather than in capital enhancement. The American investments represented many millions of dollars. It is not questioned that during the taxable years petitioners were actively engaged in carrying on the business for which they were organized.

Prior to December 1936 these petitioners had an arrangement with J. P. Morgan & Co. and the National City Bank to collect the income from their American securities and to otherwise keep them advised with reference to these securities. While these arrangements appear on the whole to have been satisfactory, there was some dissatisfaction with the failure to receive prompt information about the companies in which petitioners held securities and the Scottish company some time before had been required to pay more than \$200,000 interest to the United States Government by reason of its failure to promptly pay certain taxes which it did not realize were due. In order to secure better representation within the United States and because the Revenue Act of 1936

offered certain tax advantages to foreign corporations that established an office or place of business within the United States, petitioners decided in December of that year to establish such offices and took steps to that end by the designation of Cooper as assistant secretary of each of petitioners. He immediately and within the month rented space and opened offices and started business.

The offices so established by Cooper in behalf of petitioners and maintained through the several years, in our judgment, meet the test of the statute. They were not places for the mere handling of a casual or incidental matter, but in these offices were carried on regularly the various transactions that these offices were established to care for. Cooper was in charge and had under his direction two full time employees. Full and adequate records, as detailed in our findings of fact, were kept for each petitioner in the United States offices and it was here that all dividend checks were sent and thereafter deposited, and action on all proxies determined. Petitioners' home offices were kept informed of general developments in the United States and specific reports were made concerning petitioners' United States holdings. Reorganization plans of corporations in which petitioners owned securities were carefully followed and recommendations were made to the home offices concerning what steps, if any, should be taken to protect petitioners' interests. Stock rights and scrip when received were disposed of by petitioner's American representative without consultation with the home offices.

All United States tax returns of petitioners were prepared by the staff located in the United States. Moreover, the office expenses were not inconsequential. The expenses of Scottish for example, ranged from a low of \$1,382.78 for the short period of operation in December 1936 to a high of \$9,391.36 for 1938.

In our opinion, and office handling affairs to this extent must be regarded as real and substantial. It was here that a very large part of the affairs of petitioners in this country were taken care of. What we said in *B. W. Jones Trust*, supra, seems apropos:

"* * * Here there is nothing artificial about the office maintained for the trusts. This office was not merely a name or desk space for receiving dividends (see *Recherches Industrielles*, 45 B. T. A. 253), but an office in the sense of the common everyday conception. It was not established for purposes of compliance with a statute but was maintained in this country because of the administrative necessity of having local supervision of its affairs. Whatever affairs of the trusts were conducted in this country were transacted through that office. * * *

Not do we think one can take one by one each activity carried on in the American office of these petitioners and argue that each activity is not in and of itself the transaction of business. The collection of dividends and interest by a railroad that had leased its entire property and had ceased to function as such may not constitute the doing of business within the purview of the Revenue Act of 1909. *McCoach v. Mine Hill & S. H. R. Co.*, 228 U. S. 295, but it does not follow that the collection of the income of a large investment trust from hundreds of different sources is not to be regarded as the transaction of business. To reason otherwise might well lead to the conclusion that investment trusts are not engaged in carrying on a business.

Even if it be true that tax considerations prompted the opening of the offices in the United States, it would be of no particular significance. Congress extended the invitation to foreign corporations to establish an office or place of business in this country. So long as the office is not a sham but is a place for the transaction of business, petitioners qualify under section 231 (b). It should be noted that petitioners by opening offices in this country subjected themselves to the imposition of tax on certain gains on which they would not have been taxed had they been non-resident foreign corporations. See section 231 (a) of the Revenue Acts of 1936 and 1938 and Regulations 94 and 101, article 231-2 (a). Thus, if the petitioners had extensive capital gains in the taxable year they might well have been required to pay a greater tax by reason of being resident foreign corporations. The fact that the United States office was relatively small and that it was occupied by all three petitioners is not important. The joint occupancy of the office was a logical result of the fact that each of petitioners was engaged in a similar business.

We think petitioners have established that during the taxable years they had within the United States an office or place of business within the meaning of section 231 (b), *supra*: that the office was used for the regular transaction of business and not as a place where casual or incidental transactions might be, or were, effected. The conclusion reached requires that the year 1936 be accorded the same treatment as the latter years involved herein. The respondent is reversed.

Decisions will be entered under Rule 50.

Before United States Board of Tax Appeals

Docket No. 104249

THE SCOTTISH AMERICAN INVESTMENT CO., LIMITED, PETITIONER

No. 22.

J. JACK COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

October 20, 1942

Pursuant to the Findings of Fact and Opinion promulgated on August 6, 1942, the respondent herein having on October 15, 1942, filed a recomputation of tax agreed thereto by counsel for petitioner, now, therefore, it is

Ordered and decided; that there is an overpayment in income tax for the calendar year 1936 in the amount of \$38,933.01 which amount was paid within three years before the filing of claim for refund (Section 809 (a), Revenue Act of 1938); and that there is no deficiency in income tax for the calendar year 1937.

Enter:

Entered Oct. 20, 1942.

(Signed) J. E. MURDOCK, Member.

93. Before United States Board of Tax Appeals

Docket No. 104250

BRITISH ASSETS TRUST, LIMITED, PETITIONER

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

October 20, 1942

Pursuant to the Findings of Fact and Opinion promulgated on August 6, 1942, the respondent herein having on October 15, 1942, filed a recomputation of tax agreed thereto by counsel for petitioner, now therefore, it is

Ordered and decided; that there is an overpayment in income tax for the calendar year 1936 in the amount of \$26,319.25 which amount was paid within three years before the filing of claim for refund (Section 809 (a), Revenue Act of 1938); and that there is no deficiency in income tax for the calendar year 1937.

Enter: *W*

Entered Oct. 20, 1942.

(Signed) J. E. MURDOCK, *Member*.

Before United States Board of Tax Appeals

Docket No. 104251

SECOND BRITISH ASSETS TRUST, LIMITED, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

October 20, 1942

94

Pursuant to the Findings of Fact and Opinion promulgated on August 6, 1942, the respondent herein having on October 15, 1942, filed a recomputation of tax agreed thereto by counsel for petitioner, now therefore, it is

Ordered and decided; that there is an overpayment in income tax for the calendar year 1936 in the amount of \$14,830.14, which amount was paid within three years before the filing of claim for refund (Section 809 (a), Revenue Act of 1938); and that there is no deficiency in income tax for the calendar year 1937.

Enter:

Entered Oct. 20, 1942.

(Signed) J. E. MURDOCK, *Member*.*Statement of points*

Filed May 26, 1943

Comes now the petitioner on review herein and makes this concise Statement of Points on which he intends to reply on the review herein, to-wit:

1. The United States Board of Tax Appeals erred in holding and deciding that taxpayers have established that during the taxable years they had within the United States an office or place of business within the meaning of section 231 (b) of the Revenue Acts of 1936 and 1938; that the office was used for the regular transaction of business and not as a place where casual or incidental transactions might be, or were, effected; that the conclusion reached requires that the year 1936 be accorded the same treatment as the later years involved; and that the taxpayers are taxable as resident corporations under said section 231 (b).

95 1. (a) The United States Board of Tax Appeals erred in finding and holding that taxpayers were entitled to be taxed as resident corporations during 1936, when the evidence clearly shows they maintained no office whatsoever for at least eleven months of the year.

2. The United States Board of Tax Appeals erred in failing to hold and decide that the taxpayers were not engaged in trade or business within the United States nor had an office or place of business therein within the meaning of section 231 (b) of the Revenue Acts of 1936 and 1938 and hence they are not taxable as resident corporations under that section.

3. The United States Board of Tax Appeals erred in failing to uphold the action of the Commissioner that the taxpayers were taxable as non-resident corporations under 234 (a) of the Revenue Acts of 1936 and 1938, and in failing to approve the asserted deficiencies in income tax of the taxpayers as follows:

	1936	1937
Scottish American Investment Company, Limited	\$63,631.57	\$113,921.68
British Assets Trust, Ltd.	22,535.98	84,743.68
Second British Assets Trust, Ltd.	20,637.22	27,962.61

4. The United States Board of Tax Appeals erred in failing to find the following facts:

(a) The firm of Barrow, Wade, Guthrie & Company had about 100 foreign clients, of whom approximately 75 were investment trusts. Mr. Cooper's association with Barrow, Wade, Guthrie & Company was as an expert accountant. He had not been 96 connected with investment companies in an official capacity and had never been an investment counsel.

(b) The United States securities which the petitioners owned were held both before and after 1936 by custodian banks in New York City. J. P. Morgan & Company, Inc., was custodian for Scottish American, National City Bank for Second British Assets, while the securities of British Assets were divided between the two custodian banks. The securities were at all times held in the names of nominees who were employees or associates of the custodian banks. Securities of investment companies held by a custodian bank or by brokers are usually carried in the names of nominees. Some of the larger ones who keep their securities in their own vaults have their own nominees or nominee firms.

(c) In the case of Scottish American the charge for custodian and collection service made by J. P. Morgan & Company, Inc., was 1/2 of one percent annually on the amount of securities handled,

and $\frac{1}{4}$ of one percent on the amount of income collected. In the case of British Assets the yearly charge made by J. P. Morgan & Company for custodian services, including collection of income, consisted of a percentage of the amount of securities maintained in custody for the year, at rate of $\frac{1}{16}$ of one percent on the first \$500,000, $\frac{1}{15}$ of one percent on the next \$500,000, and $\frac{1}{20}$ of one percent on all over a million dollars. No change was made by J. P. Morgan & Company either prior or subsequent to December 1936 in the basis or method of computing such charges. National City Bank previously charged a custodian fee and an income collection fee. After about December 1936, it charged only a custodian fee.

(d) All the policies of the petitioners were decided by their boards of directors in their main offices in Edinburgh. This included decisions as to what securities to buy and what to sell.

(e) During the taxable years each of the petitioners made many purchases and sales of securities through brokers in the United States, the sales of Scottish American for 1936 and 1937 amounting to approximately \$2,750,000 and \$1,350,000, respectively. Orders for such transactions were effected directly between the main office or the foreign brokers in Edinburgh and the United States brokers, the custodian banks delivering to the United States brokers the securities sold and accepting for custody any securities purchased. In some instances the custodian bank acted as broker. Petitioners did not carry any balances with the United States brokers and the transfer of moneys or credit was handled directly between the banks and the brokers.

(f) The New York "office" had nothing to do with purchases and sales of petitioners' securities, with the exception that where only a part of the stock of a certain corporation was sold Mr. Cooper would advise the bank which particular certificates to deliver to the broker.

(g) Where meetings of corporate stockholders were held Mr. Cooper, in the absence of instructions otherwise, could direct the nominees to sign proxies provided nothing of special importance was to come up at the meeting. In the case of British Assets and Second British Assets Mr. Cooper could authorize and direct the sale of stock rights (scrip) which might be received on shares of stock.

(h) Practically all of the work performed by the New York "office" of petitioners consisted of receiving and recording the dividend checks, recording the securities owned and changes therein from time to time, and paying and recording the organization and administration expenses incidental to the "office."

5. The United States Board of Tax Appeals erred in that its opinion and decisions are not supported by the evidence and are contrary to law.

(Signed) J. P. WENCHEL,

R. L. W.

J. P. Wenchel,

Chief Counsel,

Bureau of Internal Revenue.

Service of a copy of the within statement of points is hereby acknowledged this 17th day of May 1943.

(Sgd.) MARIAN N. FISHER,

Attorney for Respondents on Review

101 In United-States Circuit Court of Appeals

APPENDIX TO RESPONDENT'S BRIEF

Testimony

HENRY A. JEFFERS, called as a witness on behalf of the Petitioners, being first duly sworn, testified as follows:

Direct examination by Mr. FISHER:

Q. Mr. Jeffers, what books of account were maintained in the office of Scottish American in this country?

A. General ledger.

Q. Was that a bound book or looseleaf book?

A. A looseleaf book, a security ledger which is also a looseleaf book, a general journal which is a bound book, a cashbook, debit and credit vouchers, and the check book, of course.

Q. Was the cashbook a bound book or looseleaf book?

A. Looseleaf.

Q. I ask you to state what book you now hold in your hand?

A. General ledger.

Q. Of what company?

A. Scottish American Investment Co., Ltd.

Mr. FISHER. If your Honor please, I won't have these books offered or identified because I want to ask the witness questions as to the number and character of entries and the method employed in maintaining their accounts in this country, and therefore I offer in evidence the general ledger of Scottish American Investment Co., Ltd.

102 The MEMBER. Are you going to leave them with us?

Mr. FISHER. I don't think it would serve any point but

I want them identified so that the witness can testify as to the contents. I will ask that they be marked for identification.

The MEMBER. Perhaps that will be better. You don't see any necessity for them going into evidence?

Mr. THOMAS. Well, frankly, no, if the books are here and I can cross-examine from them.

The MEMBER. I should think it would be important to know the records kept here in a general way. Of course, the items, details, would be unimportant. Suppose we, at the moment, mark them for identification and then we can examine them later.

The CLERK. Petitioner's Exhibit 23 for Identification.

(Book received and marked "Petitioner's Exhibit 23" for Identification.)

By Mr. FISHER:

Q. Mr. Jeffers, I hand you another book bearing the legend outside "Scottish American Investment Co." and ask you to tell me what book that is.

A. This is the security ledger.

Q. Of what company?

A. Scottish American Investment Co.

Mr. FISHER. I ask that this be marked for identification "Petitioner's Exhibit 24."

The CLERK. Petitioner's Exhibit 24 for Identification.

(Book received and marked "Petitioner's Exhibit 24 for Identification.")

103

By Mr. FISHER:

Q. I hand you a third book bearing the name of the Scottish American Investment Co. on the outside and ask you what that book is.

A. This is the journal of the Scottish American Investment Co., Ltd.

Mr. FISHER. I ask that this be marked for identification.

The CLERK. Petitioner's Exhibit 25 for Identification.

(Book received and marked "Petitioner's Exhibit 25" for Identification.)

By Mr. FISHER:

Q. I hand you a fourth book and ask you to state what that book is.

A. This is the cashbook of Scottish American Investment Co., Ltd.

Mr. FISHER. I ask that that be marked for identification as "Petitioner's Exhibit 26."

The CLERK. Petitioner's Exhibit 26 for Identification.

(Book received and marked "Petitioner's Exhibit 26" for Identification.)

Q. I hand you the journal of the Scottish American Investment Co. and ask you to describe generally the opening journal entry giving its date.

Q. Have you counted the number of entries made in that journal in 1937, the full year?

A. Yes, sir.

104 Q. How many were there?

A. There were 89.

Q. How many pages of the journal did those entries take out?

A. 28 pages.

Q. How many entries were made in the year 1938?

A. 62.

Q. How many pages about did that require?

A. 23.

Q. How many entries were made in 1939?

A. 65.

Q. And how many pages did that require?

A. 27.

Q. Now, I hand you the cashbook of Scottish American and ask you to tell me what transactions were entered in the cashbook?

A. All transactions involving cash, either receipts or expended are recorded in the cashbook.

Q. Have you counted the number of entries of cash receipts recorded in that book under date prior to January 1, 1937?

A. Yes, sir.

Q. How many were there?

A. 123.

Q. Have you counted the number of cash disbursements under date prior to January 1, 1937, entered in that book?

A. Yes, sir.

Q. How many?

A. 62.

Q. How many cash receipts in the year 1937?

A. 912.

Q. And disbursements in the year 1937?

A. 506.

105 Q. How many receipts in the year 1938?

A. 812.

The MEMBER. Dividends and interest?

The WITNESS. Dividends and interest; yes, sir; and cash received from the sale of securities.

Q. And cash disbursements in 1938?

A. 275.

Q. Cash receipts from 1939?

A. 812.

Q. And cash disbursements for 1939?

A. 365.

Q. Dr. Jeffers, have you counted the number of credit vouchers to Scottish American bearing date prior to January 1, 1937?

A. Yes, sir.

Q. How many were there?

A. Five.

Q. And how many debit vouchers were there?

A. Eleven.

Q. How many credit vouchers were there for 1937?

A. 147.

Q. How many debit vouchers for that year?

A. 164.

Q. And credit vouchers for 1938?

A. 164.

Q. And debit vouchers?

A. 96.

Q. Credit vouchers for 1939?

A. 188.

106 Q. Debit vouchers?

A. 98.

Mr. FISHER. The witness tomorrow will explain what was currently done during December 1936. The permanent form of books was not established at that time, and he will explain what was done during that interval before they established, decided upon, and made entries in the permanent form of books and that is why I made the distinction in the form I asked the questions for the period prior to 1937.

I would like to complete the statistical data with respect to the cash book of the British Assets Trust, Ltd.

I haven't asked that that be marked for identification yet. If Mr. Thomas needs it for cross-examination, why, he can have that marked.

I ask that this cashbook of the British Assets Trust be marked for identification as "Petitioner's Exhibit" next in order.

The CLERK. Petitioner's Exhibit 32 marked for identification. (Book received and marked "Petitioner's Exhibit 32" for identification.)

By Mr. FISHER:

Q. Mr. Jeffers, how many entries of receipts appear in the cash-book under date prior to January 1, 1937?

A. 87.

Q. And disbursements for the same period?

A. 64.

Q. And receipts and disbursements, respectively, for 1937?

A. 819 receipts, 378 disbursements.

107. Q. Receipts and disbursements, respectively, for 1938?

A. 754 receipts, 333 disbursements.

Q. Receipts and disbursements, respectively, for 1939?

A. 874 receipts, 413 disbursements.

Q. Turning now to the vouchers of British Assets Trust, I ask you how many credit vouchers bearing dates prior to January 1, 1937, are in the records of British Assets Trust?

A. I don't know.

Q. How many debit vouchers?

A. 14.

Q. Credit vouchers and debit vouchers for 1937?

A. 64 credit vouchers, 124 debit vouchers.

Q. Credit vouchers and debit vouchers respectively for the year 1938?

A. 110 credit vouchers and 113 debit vouchers.

The MEMBER. What are debit vouchers, what they received?

The WITNESS. A debit voucher was used for the purchase of securities, expenditures of all expenses were all debit vouchers; in addition to that, we made out a debit voucher for expenditures of new securities, in the purchasing of new securities. Debits have to do with all purchases and expenditures of money.

The MEMBER. What was the nature of expenditures, paying your help?

The WITNESS. You mean other than the purchases of securities?

The MEMBER. Yes.

The WITNESS. Rent, light, telephone, financial services, bank charges, numerous things of that kind. The expenses of operating the office, it might be said, generally.

108 By Mr. FISHER:

Q. I might ask, in that connection, was there any compensation for personal service included in the expenditures?

A. Of which companies?

Q. Of any of them.

A. All of them; yes.

Q. To whom?

A. To Mr. Cooper.

Q. Did the companies pay any of the office help direct?

A. No, sir.

Mr. FISHER. That will be clarified more by testimony in the morning, sir.

Q. Now, referring to the vouchers of Second British Assets Trusts, how many credit vouchers were there under date prior to January 1, 1937?

A. There was one.

Q. How many debit vouchers?

A. 7.

Q. Credit and debit vouchers, respectively, for the year 1937 were how many each?

A. 52 credit vouchers and 79 debit vouchers.

Q. Credit and debit vouchers, respectively, for 1938 were how many?

A. 48 credit vouchers and 60 debit vouchers.

Q. Credit and debit vouchers, respectively, for 1939 were how many?

A. 112 credit vouchers and 85 debit vouchers.

By Mr. FISHER:

Q. I hand you a memorandum. Did you prepare that memorandum?

A. Yes, sir.

100 Q. Under the name Second British Assets Trusts, do the figures there correctly reflect the number of pages and number of entries that they purport to indicate for each of the periods indicated?

A. I believe they do; yes, sir.

Cross-examination by Mr. THOMAS:

Q. I will ask you the name of this book that I am handing to you?

A. It is a check book of Scottish American Investment Company Ltd., check book stubs.

Q. On what bank were those checks drawn?

A. J. P. Morgan & Company.

Q. Can you read just a few of the items and the amounts and the dates beginning at the beginning there?

A. Yes; the first check was drawn to the order of the Analyst, for \$9.00, subscription for the year 1937, December 28, 1936.

Q. What is the next one?

A. Haskell Printing Company, \$13.77, invoice December 7, 1936, letterheads and envelopes.

The third check is dated December 28, 1936, J. P. McWalters, Inc., \$6.15, invoice December 16, 1936, lettering on door.

Check No. 4, December 28, 1936, Moody's Investors Service, \$25.

Q. That is enough right now. Are there any checks there drawn payable to Mr. Cooper?

A. No, sir.

Q. Are these checks on the Scottish American bank account at J. P. Morgan & Company?

A. Yes, sir.

110 Q. A good many of those checks were written out to cover incidental office expenses?

A. Yes, sir.

Q. Of the space here occupied here in the United States?

A. That is, right; yes, sir.

Q. And Mr. Cooper—

A. I might say this, for example, here is an expenditure that is in connection with the head office abroad. That is, they are not all local expenditures.

Q. What is the nature of that item you are just pointing out?

A. Standard Statistics Company, Inc.

Q. That is for financial information?

A. Yes, sir.

Q. That was furnished to the office abroad?

A. That is right.

Q. Wasn't Mr. Cooper paid a certain stated amount by each of these three petitioners, out of which he was to pay the office expenses over here?

A. Yes, sir.

Q. How was the amount determined if the office expenses over here were charged to the petitioner's regular account at J. P. Morgan, or the National City Bank?

A. Mr. Cooper was paid by check direct in the case of Scottish American Investment Company. That is, a check doesn't appear here for his salary.

Q. Would he receive a check in the full amount of the salary he was to get?

A. Yes, the full amount, monthly.

Q. What I am trying to get at is, how he paid the office expense out of that amount when the checks for expenses were drawn against the companies' accounts?

A. At the end of each year adjustments were made. They were paid here direct, and certain adjustments were made at the end of the year.

111 The MEMBER. Is that the account, against which these checks were drawn, the general account of the corporation or some special account?

The WITNESS. The ~~drawn~~ drawn against the only bank account, except one small account of the Scottish American in J. P. Morgan & Company. It is a general account with the company. There was a special account, a collection account, very small and quite insignificant.

Mr. FISHER. I suggest, Your Honor, that when Mr. Cooper takes the stand he can clarify this in much shorter time because it goes back to a date earlier than his detailed knowledge runs.

By Mr. THOMAS:

Q. Mr. Jeffers, Barrow, Wade, Guthrie & Company prepared and have prepared the income tax returns for these petitioners for the taxable years.

A. During the years that I have been connected with the companies' affairs I have prepared them, as an employee of these companies.

Q. Was any charge made to the petitioners for any work in connection with the preparation of these returns?

A. Not to my knowledge.

Q. Did Barrow, Wade, Guthrie & Company make any other charges during these taxable years that you know of, for services?

A. If they did, I wouldn't be familiar with it.

Q. Did you have anything to do at any time with the figuring out or checking the amount of commissions, or handling charges due to any of the custodian banks?

A. You say, did I have anything to do with it? The only 112 checks I had would be to advise the bookkeepers and clerks in the event they wanted advice and couldn't clearly understand the situation. I did not do the actual calculating myself. At this moment I could not tell you the rate we paid. They are familiar with that.

Q. Do you know whether or not during the taxable years, whether J. P. Morgan in connection with Scottish American Investment Company charged one-fourth of one per cent for the income collected from dividends?

A. At the moment I don't think I could say what the rate is.

Mr. THOMAS. That is all.

Redirect examination by Mr. FISHER:

Q. Mr. Jeffers, were you required in your employment with Wade, Barrow, Guthrie & Company to keep a record of the time you spent, of the various kinds of work done for various clients?

A. Yes, sir.

Q. Did you keep the time spent on the affairs of these companies?

A. I did; yes, sir.

Q. Have you determined, recently, the amount of time you spent in each of the years that you worked on the affairs of these companies?

A. Yes, sir.

Q. State the number of hours you worked on the affairs of the Scottish American by years?

A. From February 28, 1938, to December 31, 1938, I spent 210 hours on Scottish American Investment Trust Company.

From January 1, 1939, to December 31, 1939, I spent 309 1/4 hours on Scottish American Investment Company alone.

113 Q. Have you the corresponding figures for British Assets Trust?

A. Yes, sir.

Q. State them as briefly as possible.

A. For the first period: 147 hours.

Q. For the second period?

A. For the second period, 216 1/4 hours for British Assets Trust.

For Second British Assets Trusts, for the first period 63 hours; for the second period 93 hours.

Q. Were there any persons employed who put their full time on the affairs of these companies during the time you are familiar with the operations?

A. Yes.

Q. Name them.

A. Miss Alma Wasmuth, during the entire period.

Q. Anyone else?

A. A Miss Davis, during the entire period.

Q. Of your connection?

Mr. THOMAS. What do you mean by entire period?

The WITNESS. The entire period of my connection with these companies, up to the end of the period covered by these cases before the Court.

By Mr. FISHER:

Q. Did they spend any time on other affairs of Barrow, Wade, Guthrie & Company?

A. No, sir.

Q. You testified that you did not know as to the actual time of entry of items in the books of account. Are you familiar with whether or not the entries were currently made after you became actively connected with the affairs of the company?

A. Yes, sir.

Q. Were they currently made?

A. Yes, sir.

14 Q. Your active connection began when?

A. February 28, 1938.

Re-cross-examination by Mr. THOMAS:

Q. Mr. Jeffers, at the time you took over the management of these books, you say that was in February 1938?

A. That is correct.

Q. At that time these offices were at 120 Broadway?

A. They were still there; yes, sir.

Q. Were the offices of all three of the petitioners in one room?

A. Two rooms, I think—the leases will show that, of course.

Q. Were there any certain desks assigned to each petitioner?

A. Well, I don't think so.

Q. Did you state there was one other full-time employee while you were there?

A. There were two.

Q. How were they paid or how were charges for their services apportioned between the different petitioners?

A. I am not familiar with that question, sir.

Q. How many telephones were there in the room or rooms?

A. I think there was one. There may have been two. I am not sure.

Q. Then each of the three petitioners had the same telephone number; that correct?

A. Yes, sir.

Q. And that telephone number was also the same as Barrow, Wade, Guthrie & Company, was it not?

A. That is something I couldn't say. It is something I haven't checked, and I don't know, frankly.

Q. Don't you remember?

A. No; I had nothing to do with it. When I went to work 115. for them, I used the telephone, and naturally I did not have to use it much because my contact with the telephone was outgoing and incoming, and I did not have to call a number, but I would probably guess it was the same, but I don't know.

Q. Did Barrow, Wade, Guthrie & Company have their own private operator?

A. Yes, sir.

Q. When you made calls from the petitioners' phone, would they go through the same operator?

A. Yes; I would say that is true; yes, sir.

Q. Over in Jersey, was that 26 Journal Square?

A. That is correct; yes, sir.

Q. What was the nature of the space over there? Describe it.

A. They leased a large room and partitioned off a section for a private office. That was the lay-out of the room.

Q. One room?

A. One large room, out of which they took the corner office for my own use.

By Mr. FISHER:

Q. When the offices were moved to Jersey City, was the telephone separate from the telephone of Barrow, Wade, Guthrie & Company?

A. Yes, sir.

Q. What means of communication was there between the offices of Barrow, Wade, Guthrie & Company and the offices of these in Jersey City?

A. There was a trunk line run from 120 Broadway to 26 Journal Square.

Q. Was there any other telephone service?

A. Yes, sir; we had a New Jersey telephone also.

Q. Do you mean by that a Jersey City number?

A. Yes, sir; and a telephone.

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WALTER A. COOPER, called as a witness on behalf of the petitioners, being first duly sworn, testified as follows:

Direct examination by Mr. FISHER:

Q. Had Barrow, Wade, Guthrie & Company represented the Scottish American Investment Company prior to December 1936?

A. Yes; we acted for them in certain matters.

Q. For about how long, do you know?

A. We started Scottish American Investment Company in 1934, probably in the spring or early summer.

Q. What about British Assets Trust and Second British Assets Trusts?

A. That started in 1935.

Q. Was there any practice in the firm of Barrow, Wade, Guthrie & Company, regarding visits to their clients in England?

A. We always made it a point to have at least one partner abroad each year calling on our clients, of course, on the other side.

Q. Did your partnership agreement of Barrow, Wade, Guthrie & Company permit you to earn outside income?

A. Not for my own account. I was permitted to undertake anything I wanted to do, but if I received income, it had to be turned into the firm, or I had to account to my partners for their share of it.

Q. That provision applied to all partners?

A. Yes, sir.

Q. Was any visit made to England by any member of the firm in 1936?

A. Yes; Mr. Ritchie went over.

117 Q. Was that the only visit in 1936?

A. No; I went abroad.

Q. When did you go?

A. I think it was September 21st. It was the latter part of September, about that time.

Q. Did you take anyone with you?

A. Yes; Mr. Breeding went with me.

Q. Is Mr. Breeding a member of the firm?

A. No.

Q. What is his status?

A. Well, I guess you would call him a manager. That is the title given to men who are not members, but who are one step below.

Q. Did you visit any substantial number of the firm's clients on your trip to England which began in September 1936?

A. Yes, I visited quite a few of our own clients, and I visited our London correspondent's office, in Glasgow also, and visited quite a few companies who were not clients but whom we hoped would become clients.

Q. Did you visit the Scottish American and British Assets and Second British Assets?

A. I did.

Q. Mr. Cooper, tell the circumstances as well as you can recall them, regarding the decision to open an office in this country by each of those companies?

A. Well, we first had our discussions in the United States and I should say in the latter part of November or beginning of December 1935.

Mr. Walker, one of the employees of the company, I think they call them investment manager or something like that—

Q. Which company?

A. Of Scottish American Investment Company. This all relates at this point to Scottish American because we had at that time no discussion with the British Assets Trust. Mr. Walker was here, and at that time we acquainted him with the probable income tax, that his company would have to pay for a number of prior years, I think for the period from 1927 to 1934.

The companies—incidentally, that was the basis of our first connection with the Scottish American Investment Company. They had apparently failed to file income tax returns because they did not appreciate that they were subject to United States income tax on capital gains. They don't figure them in their records, and they

can't pay it out, and their charters prevents them from showing it in their P. & L. account.

Our job first which we were engaged to do in 1934 was to figure through all the records of the brokers and banks to find out what their proper tax liability amounted to. We had of course quite a difficult time in getting all the data, and it was towards the end of 1935, when we were reaching a concluding point to know just what was involved, that Mr. Walker happened to be over here, and we told him all about it.

It looked then as though they would have to pay back taxes over something like a million dollars, and the interest on that amount was something like \$220,000, or we knew it was over two hundred, anyway.

We had not reached any final figures. They were not particularly bothered about paying a million dollars, because they simply charged that to their investment account, but they were very much concerned about paying \$200,000, because that was a charge to income, as in the case of other investment companies, and Mr. Walker said we might have kept our office open here all along.

They apparently had an office for some prior period and closed it up, and unfortunately the interest that they had to pay on these back taxes involved a lot more than it would have cost them if they had kept their office here all along.

119 I immediately took it up, and I said, "I can be very representative and handle whatever you want to know."

He said, "That is something we had better think about," and he said, "If we are going to be faced with these problems we ought to do something about it, especially since it is costing us more not to have an office," because he paid this additional interest. And he left then with that in mind to talk to the directors when he got back.

When I was over there, I don't recall whether I got to Edinburgh before the end of September; no, it was in October when I got to Edinburgh, and we discussed the matter with the secretary, and finally met the board of the Scottish American Investment Company. Talked to them about the whole problem, and not only what we could do as a secretary or whatever office they wanted to appoint us to, in helping them in their whole operations, but we also had to explain at that time the new Revenue Act which had come out in the meantime.

We first talked about it because it was brand new in 1936. So I explained to them just how that would work, that if they had an office or established an office here, they would not have to pay their tax on a withholding basis, but any capital gains would have to be taxed, and of course they just paid a million dollars on capital gains, and of course if they didn't have an office there would be

no tax on capital gains, and they would not have to pay any attention to capital gains as they were previously required to do, but their interest and income would be subject to direct withholding at the source as it came through.

We made some computations, but you couldn't tell how it was going to come out, because it would depend on whether they had capital gains or not.

We discussed it with the board, and they discussed it on the basis on which I could open the office.

It is common practice to appoint a secretary or assistant secretary, and say we will give you so much money per year and you take care of everything out of that, and they do that because it's cheaper to let four or five companies appoint one man secretary and give him so much per annum, and anything left is for his own benefit, and in that way the company pays less.

I could not give them the exact figures at the time; and I suggested somewhere between seventy-five hundred and ten thousand dollars would be the likely cost.

Q. Did they reach any decision—withdrawn.

Q. Did you discuss the situation, the question of opening an office with the British Assets Trust and Second British Assets Trust?

A. Yes; in Edinburgh, the British Assets and Second British Assets Trusts are connected, and we were meeting them at different times, and with Mr. Ivory, and we discussed the same problems with him.

Also, when they had their board meetings we went over to meet the board. I don't know whether Mr. Breeding was with me at those conferences, but I met the board and talked to them, too.

At the time I left, they did not know whether they wanted an office or did not, and if they were going to do anything they might do it the following year, so when we left England in November, they had told me at that point they did not decide to do anything and apparently when I got back they had a second directors' meeting and decided to open an office and cabled me accordingly.

Q. You stated that it wasn't unusual for more than one company to have a joint secretary to whom they would pay a stated sum and the secretaries bear all expense of operations of certain types. Were there any other instances besides this arrangement that you are familiar with, that you can recall?

A. Well, I know of about, I should say, close to fifty, if not more than fifty, investment trusts in England and Scotland, and out of all of them the Scottish American is only one that has a single office by itself, all the others have a combination of three to eleven, so they are all at one place with the same

employees doing the work for all of them; in that way they can get better services at less cost.

Even the British Assets and the Second British Assets in this case have one office with the same secretaries, with Ivory and Sime.

Q. I show you Petitioner's Exhibit No. 5, from Scottish American Investment, dated December 3rd. Is that the only advice you got that you had been appointed assistant secretary and should open an office here, proceed to open an office here?

A. No; it is my recollection that I got a cable before this. I think it was on a Thursday morning because they have a meeting on Wednesday, and saying they had decided to open an office here, and appoint me secretary, and the papers were on the way.

Q. Did you do anything toward opening an office before you got the cable?

A. No; nothing whatsoever. We had no idea at that point that they were going to open an office.

Q. These exhibits put in show that about May 1937 Mr. Breeding was elected as an assistant secretary also; do you know anything about why that was done?

A. Yes; I requested them to do it, for this reason: I had not been feeling any too well, and I had a rather hectic year on top of the fact that I had not been away for ten years, and the doctor told me to get away for the whole summer, and I was laying my plans to stay away for the whole of the summer of 1937, and we just do not leave the offices without having somebody handy, and I was going to be several hundred miles away from New York, where I wasn't going to be readily available, so

I suggested to the company that in view of the fact that I would be away they ought to appoint somebody else as an assistant secretary to act while I wasn't there, and that led to the appointment of Mr. Breeding, whom they had met when he was abroad with me in 1936.

When I came back, which was the week after Labor Day, I decided things were moving so rapidly and I had to go away days here and days there, it would be just as well if we kept two secretaries to act.

Q. The appointment as shown by the Exhibits already in evidence did not give Mr. Breeding the authority to draw on the bank or sign checks. Was that limitation removed at any later time?

A. Well, as a matter of fact, we didn't realize he did not have that authority until we signed some checks and they came back. I think we took immediate steps to have it corrected, if we could.

Q. I show you a letter dated February 9, 1939, from Scottish American, and ask you whether or not that letter was received by you in due course?

A. That is right.

Mr. FISHER. I offer in evidence letter from Scottish American to Cooper, dated February 9, 1939.

The MEMBER. It will be received.

The CLERK. Petitioner's Exhibit 39.

(Received in evidence and marked "Petitioner Exhibit 39.")

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Petitioner's Exhibit 7

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

123 George Street

EDINBURGH 2, 18th June 1937.

W. A. COOPER, Esq.,

Assistant Secretary, The Scottish American Investment Co., Ltd., 120 Broadway, New York.

DEAR SIR: With further reference to your letter to me of 19th May 1937, I have to inform you that my Directors at their Meeting on 16th instant appointed Mr. Earl B. Breeding an Assistant Secretary of the Company in addition to yourself. Mr. Breeding will have the same duties and authority as you have, except that Mr. Breeding will not have authority to draw on the Company's Bank Account. I enclose copy of the formal Resolutions. I have today sent to Messrs. J. P. Morgan & Co. a similar copy, except that paragraph 3 has been omitted.

Yours faithfully,

J. R. McLAREN, *Secretary.*

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Petitioner's Exhibit 8

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

Copy of Resolutions passed at Board Meeting held at Edinburgh,
16th June 1937

It was resolved—

1. that Mr. Earl B. Breeding be appointed an Assistant Secretary of the company in addition to Mr. Walter A. Cooper;

2. that the duties and authority of Mr. Breeding be the same as those of Mr. Cooper except that Mr. Breeding will have no power to draw on the company's accounts with Messrs. J. P. Morgan & Co.;

3. that Mr. Breeding's remuneration be provided by Mr. Cooper and not by the company.

Certified a true Copy.

For and on behalf of

THE SCOTTISH AMERICAN INVESTMENT COMPANY,
LIMITED.

A. W. ROBERTSON-DURHAM, *Director.*

C. D. KING, *Director.*

J. R. McLAREN, *Secretary.*

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Petitioner's Exhibit 15

BRITISH ASSETS TRUST, LTD.

9 Charlotte Square

EDINBURGH 2, 31st May 1937.

WALTER A. COOPER, Esq.,

Messrs. Barrow, Wade, Guthrie & Co.,

120 Broadway, New York.

Appointment of Additional Assistant Secretary

DEAR SIR: We duly received your letter of 19th instant, and in view of what you say regarding your proposed vacation shortly, we approve of appointing Mr. Breeding as joint assistant along with you, to carry on the office work, with the exception that we are not giving him authority to sign drafts on the Bank Accounts and that the compensation already arranged is to cover his appointment. We are writing the National City Bank of New York and Messrs. J. P. Morgan & Co. advising them of this; and at the next Meeting of Directors we will have a resolution passed approving of the appointment. If you wish to have an excerpt of this, you can let us know in course.

Yours faithfully,

A. W. ROBERTSON-DURHAM,

Director.

IVORY & SIMP, *Secretaries.*

JSB/C.

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Petitioner's Exhibit 22

SECOND BRITISH ASSETS TRUST, LTD.

9 Charlotte Square

EDINBURGH 2, 31st May 1937.

WALTER A. COOPER, Esq.,

Messrs. Barrow, Wade, Guthrie & Co.,

120 Broadway, New York.

Appointment of Additional Assistant Secretary

DEAR SIR: We duly received your letter of 19th instant, and in view of what you say regarding your proposed vacation shortly, we approve of appointing Mr. Breeding as joint assistant along with you, to carry on the office work, with the exception that we are not giving him authority to sign drafts on the Bank Accounts and that the compensation already arranged is to cover his appointment. We are writing The National City Bank of New York advising them of this, and at the next Meeting of Directors we will have a resolution passed approving of the appointment. If you wish to have an excerpt of this, you can let me know in course.

Yours faithfully,

A. W. ROBERTSON-DURHAM,

Director.

JSB C.

IVORY & SIME, Secretaries.

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Petitioner's Exhibit 33

CASHBOOK

NUMBER OF ENTRIES MADE

	1936	1937	1938	1939	Total
Scottish American Investment Co., Ltd.					
Cash receipts	125	912	812	812	2,661
Cash disbursements	62	508	275	565	1,308
British Assets Trust Ltd.					
Cash receipts	87	819	754	874	2,534
Cash disbursements	94	578	333	413	1,188
Second British Assets Trust Ltd.					
Cash receipts	43	432	372	415	1,262
Cash disbursements	31	151	127	232	541
Total					
Cash receipts	255	2,163	1,938	2,101	6,457
Cash disbursements	157	1,035	735	1,010	2,937

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Petitioner's Exhibit 34

JOURNAL--DATA

	1936	1937	1938	1939	Total	Average over 3 full years
Scottish American Investment Co., Ltd.						
Number pages opening entry	13				13	
Number pages	4	28	21	27	82	20
Number entries	11	89	62	65	227	57
British Assets Trust, Ltd.						
Number pages opening entry	10				10	
Number pages	2	22	29	36	89	22
Number entries	5	68	75	78	230	58
Second British Assets Trust, Ltd.						
Number pages opening entry	5				5	
Number pages	2	15	16	21	56	14
Number entries	4	53	51	60	168	42
Totals						
Number pages opening entries	20				20	
Number pages	8	65	68	89	227	57
Number entries	21	210	191	203	625	156

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Petitioner's Exhibit 38

VOUCHERS

	1936	1937	1938	1939	Total
Scottish American Investment Co., Ltd.					
Credit vouchers	5	147	164	188	504
Debit vouchers					
Noncheck vouchers	2	87	16	20	125
Check vouchers	9	77	80	78	244
Total debit vouchers	11	164	96	98	369
British Assets Trust Ltd.					
Credit vouchers		64	110	230	404
Debit vouchers					
Noncheck vouchers	6	60	59	52	206
Check vouchers	8	64	54	52	178
Total debit vouchers	14	124	113	135	386
Second British Assets Trust, Ltd.					
Credit vouchers	1	52	48	112	213
Debit vouchers					
Noncheck vouchers	1	14	13	29	57
Check vouchers	6	65	47	56	174
Total debit vouchers	7	79	60	85	231
Totals					
Credit vouchers	6	263	322	580	1,171
Debit vouchers					
Noncheck vouchers	9	161	88	132	390
Check vouchers	23	206	181	186	596
Total debit vouchers	32	367	269	318	986

Petitioner's Exhibit 39

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED

45 Charlotte Square

EDINBURGH 27th February 1939.

W. A. COOPER, Esq.,

Assistant Secretary, The Scottish American Investment Co., Ltd.,
26 Journal Square, Jersey City, N. J.

DEAR MR. COOPER: At a Board Meeting held yesterday the Board passed a number of Resolutions dealing with our Banking arrangements. I enclose a copy of these Resolutions in so far as they affect our relations with our American Bankers. I have also forwarded a certified copy of these Resolutions to Messrs. J. P. Morgan & Co. The object of passing these Resolutions was to consolidate all previous Minutes, etc., dealing with our Banking

131 arrangements. At the same time, we have made a few minor alterations. The only change of any importance is that Mr. Breeding and you now have equal powers in regard to drawing on Morgans. These provisions are contained in XI-(f). The Resolutions required by the First National Bank of Jersey City in connection with the death of Mr. Pitman and the appointment of Mr. Blair will be dealt with at next week's Board Meeting. I shall send you copies in due course.

Yours faithfully,

J. R. McLAREN, *Secretary*.

132 Proceedings in the United States Circuit Court of Appeals
for the Fourth Circuit

No. 5122

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

vs.

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
RESPONDENT

On Petition to Review the Decision of The Tax Court of the
United States

June 26, 1943, the transcript of record is filed and the cause docketed.

Same day, motion for extension of time to transmit record is filed.

Order extending time for completion and transmission of record

Filed June 26, 1943

(Style of Court and Title Omitted)

Upon motion of Petitioner, by his counsel, and for good cause shown,

It is ordered that the time for the completion and transmission of the record on review in this case be, and the same is hereby, extended from April 17, 1943, to and including July 17, 1943.

April 7th, 1943.

JOHN J. PARKER,
Senior Circuit Judge.

Same day, to wit, June 26, 1943, certified copy of order enlarging time for the preparation, transmission and delivery of the record to April 17, 1943, is filed.

Same day, motion to consolidate is filed.

Same day, order of consolidation is filed.

[Memo of Clerk: This order is set out at page 637 of the transcript of record and is, therefore, omitted here.]

June 29, 1943, the appearance of Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key, Special Assistant to the Attorney General; J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and John M. Morawski, Special Attorney, Bureau of Internal Revenue, is entered for the petitioner.

133 Same day, the appearance of Marion N. Fisher and William H. Harra^o is entered for the respondent.

September 13, 1943, the appearance of Samuel O. Clarke, Jr., Assistant Attorney General; Sewall Key, Samuel H. Levy, Helen Goodner and Warren F. Whittles is entered for the petitioner.

Same day, brief on behalf of the petitioner is filed.

Same day, appendix to the brief of the petitioner is filed.

September 28, 1943, brief and appendix on behalf of the respondent are filed.

Argument of cause

October 12, 1943 (October term, 1943), cause came on to be heard, together with Nos. 5123 and 5124, before Parker, Soper and Dobie, Circuit Judges, and was argued by counsel and submitted.

Opinion

Filed November 8, 1943

United States Circuit Court of Appeals Fourth Circuit

No. 5122

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
RESPONDENT

No. 5123

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

BRITISH ASSETS TRUST, LIMITED, RESPONDENT

No. 5124

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

SECOND BRITISH ASSETS TRUST, LIMITED, RESPONDENT

On Petitions to Review the Decisions of the Tax Court of the
United States, formerly the United States Board of Tax Appeals

(Argued October 12, 1943. Decided November 8, 1943)

Before PARKER, SOPER, and DOBIE, Circuit Judges

Warren F. Wattles, Special Assistant to the Attorney General
(Samuel O. Clark, Jr., Assistant Attorney General; Sewall
134 Key, Samuel H. Levy and Helen Goodner, Special Assistants
to the Attorney General, on brief) for Petitioner; and
Marion N. Fischer (William H. Harris on brief) for Respondents.

DOBIE, Circuit Judge: Scottish American Investment Company,
Limited, British Assets Trust, Limited, and Second British As-
sets Trust, Limited, are all corporations organized under the laws
of Great Britain. Each has its principal office in Edinburgh, Scot-
land. For convenience, the three corporations are hereinafter
called the Trusts. The Trusts were engaged in the business of
investing the funds of their security holders. These investments
were made primarily for the purpose of security of principal and
adequacy of income.

On December 2, 1936, the Trusts had over \$40,000,000 invested
in securities in the United States. Walter A. Cooper, C. P. A.,
(hereinafter called Cooper) had been engaged by Scottish American
Investment Company, Limited, for the purpose of making an
audit of this Company's sales of securities and profits for a period
of years prior to 1936. Cooper was a partner in the accounting
firm of Barrow, Wade, Guthrie & Co., of New York City.

In September and October, 1936, Cooper and Breeding (an em-
ployee of the Barrow Wade firm) discussed in Scotland with of-
ficers of the Trusts the problem of opening an office for the Trusts

in the United States. In that connection, the possible advantages of such an office as to taxes in the United States were considered. Cooper and Breeding, however, returned to the United States without any agreement having been reached as to the opening of an office for the Trusts in the United States.

Each of the Trusts, by cable on December 2, 1936, appointed Cooper its assistant secretary and authorized him to open offices for the Trusts in the United States. Letters to Cooper, of even date, confirmed the cable and contained further instructions. Cooper, immediately upon receipt of the cable, rented office space of two rooms in the Equitable Building in New York, on the floor just below the offices of the Wade-Barrow firm. A lease of one year was executed, with a designated portion of the offices assigned to each of the Trusts. Cooper seemed to act with unusual speed to set in motion the activities of the offices of the Trusts. The New York banking firms having custody of the securities of the Trusts were furnished with the names of new nominees for these securities. The American corporations, whose securities were owned by the Trusts, were notified to send reports, statements and notices, and to pay dividends, to the New York offices of the Trusts. Employees were engaged, a telephone (connected 135 through the switchboard of the Wade-Barrow firm) was installed, and a system of bookkeeping and accounts was set up.

As assistant secretary, Cooper had the same measure of authority as any officer or director of the Trusts at the home office in Scotland. Definite authority was given to Cooper: (1) to collect and deposit in the bank accounts of the Trusts dividends on the American securities; (2) to draw on these accounts up to \$5,000 a month and to pay local expenses of the New York office; (3) to keep complete records of the American securities; (4) to make periodic reports (usually once a week) by cable and/or letter concerning economic and political developments in the United States; (5) to complete and file federal income-tax and capital-tax returns; (6) to forward plans of corporate reorganizations and to make definite recommendations to the Trusts concerning the action to be taken by the Trusts in connection with such reorganizations; (7) to dispose of stock rights and scrip; (8) to act, under certain circumstances, on proxies; (9) to designate the specific stock certificates to be transferred upon a sale by the Trusts of less than all of their holdings in a particular corporation.

We are here concerned with income taxes of the United States on the Trusts for the calendar years of 1936 and 1937. The three cases were argued together and may be disposed of in a single opinion. The Board of Tax Appeals (hereinafter called the Board, and now the Tax Court of the United States) decided that the Trusts were resident foreign corporations and taxable accordingly.

Whether or not the Trusts are taxable as resident foreign corporations depends on whether or not the Trusts had "an office or place of business" within the United States under section 231 (b) of the Revenue Acts of 1936 and 1938 which reads:

"SEC. 231. Tax on foreign corporations.

(b) Resident corporations.—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a), but the normal tax imposed by section 13 shall be at the rate of 22 per centum instead of at the rates provided in such section.

(b) Resident corporations.—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable as provided in section 14 (e) (1)."

Regulations of the Commissioner of Internal Revenue, 101 (art. 231-1 (b)) under the Revenue Act provides:

136 "Whether a foreign corporation has an 'office or place of business' within the United States depends upon the facts in a particular case. The term 'office or place of business,' however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected."

We agree with the Board that the Trusts, under the Statute and Regulations, had "an office or place of business" within the United States and that they were thus properly taxed for the years in question as resident foreign corporations.

Reduced to its simplest terms, the contention of the Commissioner seems to be that the business of the Trusts was primarily the purchase and sale of securities, that all decisions as to such purchases and sales were made in Edinburgh and orders therefor were given directly from Edinburgh to brokers in the United States, that, accordingly, the many and varied activities of the New York office of the Trusts were merely "casual or incidental." Hence, the Commissioner asserts, the Trusts, within the meaning of the Revenue Acts and the Regulations, had no "office or place of business" within the United States and, therefore they were not resident foreign corporations and not taxable as such. We cannot concur in so broad a contention.

The cases cited in the Brief of the Commissioner are not opposed to the decision reached by the Board in the instant case. See *Linco Thread Co. v. Commissioner*, 128 F. (2d) 186, cert. den. 317 U. S. 673; *Aktielslaget Separator v. Commissioner*, 45 B. T. A. 243, affirmed per curiam 128 F. (2d) 739; *B. W. Jones Trust v. Com-*

missioner, 132 F. (2d) 914. In the Linen Thread case and the Aktiebolaget case, the activities and responsibilities of the office in the United States were neither so important nor so extensive as were those of Cooper here. In the Linen Thread case, too, the foreign corporation was a manufacturer, and the investments were in the nature of a side issue, while investing was the sole business of the Trusts before us. In the B. W. Jones Trust case (decided by this Court) the resident trustee had more responsible and more important duties than Cooper had, for that trustee had actual custody of the securities, and he had the power to make sales and purchases. Yet this case does not hold that such power on the part of the resident trustee, agent, or officer is essential in order that the foreign corporation may have an "office or place of business" within the United States under our tax statutes.

We think there is more than ample support in the record for the finding by the Board that the trusts here had an "office or place of business" within the United States. The duties, powers, and responsibilities of Cooper were far from being purely ministerial, casual or incidental. He was vested with real discretion, his duties were varied and important, the transactions passing through his office in connection with the American investments of the Trusts were many in number and involved large sums of money. And this is nevertheless true, even though he had no power to make final decisions as to what securities were to be bought or sold. There was nothing artificial or sham about this office. We agree, too, with the Board that the proper approach to this problem is not to consider each activity and power separately and to analyze it apart so as to determine whether that one activity or power, considered alone, can be construed as casual or incidental. But the composite picture of these activities and powers must be viewed as an integrated whole, and a solution must be sought accordingly. The strength of a rope is not that of a single strand, or as Mr. Justice Holmes aptly said in *Edwards v. Chile Copper Co.*, 270 U. S. 452, 455:

"We cannot let the fagot be destroyed by taking up each item of conduct separately and breaking the stick. The activities and situation must be judged as a whole."

Perhaps more favorable treatment under our tax laws may have been a prime determinant in inducing the Trusts to open and operate this New York office under Cooper's charge and direction. But this does not prevent this office, if in reality that is just what it was, from being an "office or place of business," with the rights, privileges, and advantages thereunto appertaining under our tax laws.

Finally, the Commissioner contends that there was certainly no "office or place of business" here for the year 1936. The foreign corporation is classified and taxed as a resident foreign corporation, if the corporation has an office or place of business within the United States "at any time within the taxable year." Regulations 94, Art. 231-1. We think that what has been said about the activities and operations of Cooper during the month of December 1936 affords ample support for the Board finding that the Trusts had an "office or place of business" within the United States at some "time within the taxable year" of 1936.

The decision of the Board of Tax Appeals is affirmed:
Affirmed.

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Judgment.

Filed and Entered November 9, 1943

United States Circuit Court of Appeals, Fourth Circuit

No. 5122

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

THE SCOTTISH AMERICAN INVESTMENT COMPANY, LIMITED,
RESPONDENT

On Petition to Review the Decision of The Tax Court of the United States, formerly United States Board of Tax Appeals

This cause came on to be heard on the transcript of the record from The Tax Court of the United States, formerly United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the decision of the said The Tax Court of the United States, formerly United States Board of Tax Appeals, in this cause, be, and the same is hereby, affirmed.

November 9, 1943.

ARMISTEAD M. DOBIE,

U. S. Circuit Judge.

On another day, to wit, December 10, 1943, the mandate of this Court, in this cause, is issued and transmitted to The Tax Court of the United States, at Washington, D. C., in due form.

139 Proceedings in the United States Circuit Court of Appeals
for the Fourth Circuit

No. 5123

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

BRITISH ASSETS TRUST, LIMITED, RESPONDENT

On Petition to Review the Decision of The Tax Court of the
United States

June 26, 1943, the transcript of record is filed and the cause
docketed.

Same day, motion for extension of time to transmit record is
filed.

Order extending time for completion and transmission of record

Filed June 26, 1943

(Style of Court and Title Omitted)

Upon motion of Petitioner, by his counsel, and for good cause
shown.

It is ordered that the time for the completion and transmission
of the record on review in this case be, and the same is hereby,
extended from April 17, 1943, to and including July 17, 1943.

April 7th, 1943.

JOHN J. PARKER,
Senior Circuit Judge.

Same day, to wit, June 26, 1943, certified copy of order enlarging
time for the preparation, transmission, and delivery of the record
to April 17, 1943, is filed.

Same day, motion to consolidate is filed.

Same day, order of consolidation is filed.

[Memorandum of Clerk: This order is set out at page 637 of the trans-
cript of record and is, therefore, omitted here.]

June 29, 1943, the appearance of Samuel O. Clark, Jr., Assistant
Attorney General; Sewall Key, Special Assistant to the Attorney
General; J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue,
and John M. Morawski, Special Attorney, Bureau of Internal
Revenue, is entered for the petitioner.

Same day, the appearance of Marion N. Fisher and William H. Harrar is entered for the respondent.

140 September 13, 1943, the appearance of Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key, Samuel H. Levy, Helen Goodner and Warren F. Wattles is entered for the petitioner.

Same day, brief on behalf of the petitioner is filed.

Same day, appendix to the brief of the petitioner is filed.

September 28, 1943, brief and appendix on behalf of the respondent are filed.

Argument of cause

October 12, 1943 (October term, 1943), cause came on to be heard, together with Nos. 5122 and 5124, before Parker, Soper and Dobbie, Circuit Judges, and was argued by counsel and submitted.

Opinion

Filed November 8, 1943

[Memo. of Clerk: The opinion is set out at page 6 and is, therefore, omitted here.]

Judgment

Filed and Entered November 9, 1943

United States Circuit Court of Appeals, Fourth Circuit

No. 5123

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

vs.

BRITISH ASSETS TRUST, LIMITED, RESPONDENT

On Petition to Review the Decision of The Tax Court of the United States, formerly United States Board of Tax Appeals

This cause came on to be heard on the transcript of the record from The Tax Court of the United States, formerly United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the decision of the said The Tax Court of the

United States, formerly United States Board of Tax Appeals, in this cause, be, and the same is hereby, affirmed.

November 9, 1943.

ARMISTEAD M. DOBIE,
U. S. Circuit Judge.

On another day, to wit, December 10, 1943, the mandate of this Court, in this cause, is issued and transmitted to The Tax Court of the United States, at Washington, D. C., in due form.

141. Proceedings in the United States Circuit Court of Appeals for the Fourth Circuit

No. 5124

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

vs.

SECOND BRITISH ASSETS TRUST, LIMITED, RESPONDENT

On Petition To Review the Decision of The Tax Court of the United States

June 26, 1943, the transcript of record is filed and the cause docketed.

Same day, motion for extension of time to transmit record is filed.

Order extending time for completion and transmission of record

Filed June 26, 1943

(Style of Court and Title Omitted)

Upon motion of Petitioner, by his counsel, and for good cause shown,

It is ordered that the time for the completion and transmission of the record on review in this case be, and the same is hereby, extended from April 17, 1943, to and including July 17, 1943.

April 7th, 1943.

JOHN J. PARKER,
Senior Circuit Judge.

Same day, to wit, June 26, 1943, certified copy of order enlarging time for the preparation, transmission and delivery of the record to April 17, 1943, is filed.

Same day, motion to consolidate is filed.

Same day, order of consolidation is filed.

[Memo. of Clerk: This order is set out at page 637 of the transcript of record and is, therefore, omitted here.]

June 29, 1943, the appearance of Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key, Special Assistant to the Attorney General; J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and John M. Morawski, Special Attorney, Bureau of Internal Revenue, is entered for the petitioner.

142 Same day, the appearance of Marion N. Fisher and William H. Harrar is entered for the respondent.

September 13, 1943, the appearance of Samuel O. Clark, Jr., Assistant Attorney General; Sewall Key, Samuel H. Levy, Helen Goodner and Warren F. Wattles is entered for the petitioner.

Same day, brief on behalf of the petitioner is filed.

Same day, appendix to the brief of the petitioner is filed.

September 28, 1943, brief and appendix on behalf of the respondent are filed.

Argument of cause

October 12, 1943 (October term, 1943), cause came on to be heard, together with Nos. 5122 and 5123, before Parker, Soper, and Doble, Circuit Judges, and was argued by counsel and submitted.

Opinion

Filed November 8, 1943

[Memo. of Clerk: The opinion is set out at page 6 and is, therefore omitted here.]

Judgment

Filed and Entered November 9, 1943

United States Circuit Court of Appeals, Fourth Circuit

No. 5124

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

vs.

SECOND BRITISH ASSETS TRUST, LIMITED, RESPONDENT

One Petition to Review the Decision of the Tax Court of the United States, Formerly United States Board of Tax Appeals

This cause came on to be heard on the transcript of the record from The Tax Court of the United States, formerly United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the decision of the said The Tax Court of the United States, formerly United States Board of Tax Appeals, in this cause, be, and the same is hereby, affirmed.

November 9, 1943.

ARMISTED M. DOBIE,

U. S. Circuit Judge.

143 On another day, to wit, December 10, 1943, the mandate of this Court, in this cause, is issued and transmitted to The Tax Court of the United States, at Washington, D. C., in due form.

Clerk's certificate

UNITED STATES OF AMERICA.

Fourth Circuit, ss.

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the appendix to petitioner's brief; appendix to respondents' brief, and the proceedings in the said Circuit Court of Appeals in the therein entitled causes, as the same remain upon the records and files of the said Circuit Court of Appeals, and constitute and is a true transcript of the record and proceedings in the said Circuit Court of Appeals in said causes, made up in accordance with the direction of the Solicitor General of the United States, for use in the Supreme Court of the United States on applications for writs of certiorari.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 3rd day of April, A. D. 1944.

CLAUDE M. DEAN,

Clerk, U. S. Circuit Court of Appeals,

Fourth Circuit.

*Order extending time within which to
apply for a writ of certiorari*

On consideration of the motion of counsel for the petitioner in the above cases, and good cause therefor having been shown, it is ordered that the time within which a petition for a writ of certiorari may be filed herein in behalf of the Commissioner of Internal

Revenue be and the same is hereby extended for a period of 60 days from February 8, 1944.

Dated this 5th day of February 1944.

HARLAN F. STONE,

Chief Justice of the United States.

144

In the Supreme Court of the United States

October Term, 1944

[Title omitted.]

Stipulation as to record

Filed June 19, 1944

It is hereby stipulated and agreed by the above-named parties, through their counsel, that the record filed in this Court with the petition for writs of certiorari may be used in the hearing of this case on the merits. It is further stipulated that any of the parties may refer in briefs and argument to the original transcript of record filed in this Court.

CHARLES FAHY,

Charles Fahy

Solicitor General,

Counsel for Petitioner.

MARIO N. FISHER,

Counsel for Respondents.

JUNE 1944.

145

Supreme Court of the United States

No. 52, October Term, 1944

Order allowing certiorari

Filed May 29, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

146

Supreme Court of the United States

No. 53, October Term, 1944

Order allowing certiorari

Filed May 29, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

147

Supreme Court of the United States

No. 54, October Term, 1944

Order allowing certiorari

Filed May 29, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.